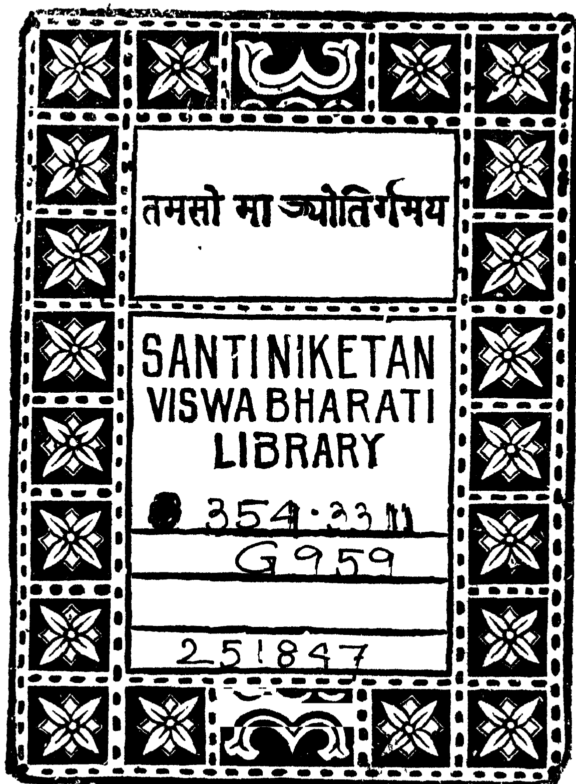

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LAND ACQUISITION ACTS
AND
PRINCIPLES OF VALUATION.

By

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S. C. SARKAR & SONS LTD.

1/1/1-C, College Square, Calcutta.

December, 1939.

Price Rupees Six and Annas Eight only.

Printed by Sasadhar Chakrabarty at Kalika Press Ltd., 25, D. L. Roy Street, Calcutta. and Published by Rabindra Nath Gupta, 14/1, Townshend Road, Calcutta.

PREFACE.

An endeavour has been made in this book to present a complete annotation of the Land Acquisition Act of 1894 and the Land Acquisition (Mines) Act of 1885. The modifications made in the Act of 1894 by the various local Acts, have been explained under the appropriate sections; and the relevant portions of these Acts have been quoted in the Appendix. References have also been given, with extracts where necessary, to the corresponding provisions in the English Acts.

A brief account of the development of legislation regarding acquisition of land for public purposes and for the purposes of local bodies and Companies, has been given in the Introduction; and for better understanding of the earlier decisions, the whole of the old Act X of 1870 has been reproduced in the Appendix.

The principles of valuation of land, so far as such valuation is involved in determining the amounts of compensation in Land Acquisition, have been dealt with at some length in the notes under sections 23 and 24 of the main Act.

It is hoped that the book will receive the approbation of the legal profession, and will also be of help to the officers employed in land acquisition work and to the public.

The author is grateful to Mr. A. N. Gupta, M.Sc., B.L., Advocate, for the care and attention with which he has gone through the manuscript and the proofs.

Calcutta,
the 1st Dec. 1939.

M. N. G.

CONTENTS.

TABLE OF CASES CITED

Page

INTRODUCTION.

I

The first legislation in India on the subject of acquisition of land for public purposes was Regulation I of 1824. Its object was explained in the Preamble, thus :—

History of Land-Acquisition Legislation.

"Whereas it being necessary occasionally to require the surrender of the property of individuals, for purposes of general convenience to the community, it appears expedient distinctly to define the course of proceeding to be followed in such cases, in order, that works and arrangements of public utility may not be unduly impeded, and that at the same time, a just and full compensation may be secured to all persons, holding an interest in the property so appropriated "

Reg. I of 1824.

Sections 2 to 8 of the Regulation dealt with the above general subject : and sections 9 to 15 related to cases where lands were required for the purposes of salt manufacture involving adjustment of claims between Government and the Zemindars in certain areas where Government had a monopoly to manufacture salt.

2. The rules in Regulation I of 1824 were enacted to be in force "throughout the whole of the provinces immediately subject to the Presidency of Fort William". By an Act passed in 1850 (Act I of 1850) the provisions of sections 1 to 7 of the Regulation were made applicable to all lands within the Town of Calcutta which would be declared by the Governor of Bengal as needed for any public purpose (section 1); and the reasons stated in the preamble were that "the execution of works of public usefulness in Calcutta was liable to be hindered by the difficulty in making a good title to the land taken for such purpose".

Act I of 1850.

3. In the same year another Act (Act XLII of 1850) was passed with the object of assuming "more summary power (than was provided for in Regulation I of 1824) for gaining immediate possession of the land needed" for making the Railway then about to be constructed. The Act declared in the first place (section 1) that any Railway made under the sanction of Government was a "public purpose", and then authorised the officer of Government to summarily enter upon and take possession of such land as was required, and settle the amount of compensation by agreement with the parties interested. If such agreement could not be obtained, the procedure in Regulation I of 1824 was then to be followed for settling the amount. The powers under the Act and the Regulation were also extended to temporary occupation for taking earth or other materials in the case of any road, canal or railway, not more than one hundred yards from the centre line of such road, canal or railway.

Act XLII of 1850 —for Railways etc.

4. The provisions of Regulation I of 1824 were extended to the Madras Presidency in 1852 by Act XX of that year. In the meantime, an Act was passed in 1839 (Act XXVIII of 1839) providing for rules for the acquisition of "any ground within the islands of Bombay or Colaba, for the purpose of widening or altering any existing road, street or other thoroughfare, or drain, for making any new public road, street or other thoroughfare, or drain" ; and by Act XVII of 1850 these rules were extended to taking of "lands needed for any railway for the conveyance of goods or passengers within the said islands".

Acts XX of 1852 (for Madras) and XXVIII of 1839 and XVII of 1850 (for Bombay islands).

5. The first consolidated Act applicable to the whole of British India was Act VI of 1857, and it repealed sections 1 to 7 of Regulation I of 1824, and Acts XXVIII of 1839, I, XVII and XLII of 1850, XX of 1852 and I of 1854. The object as stated in the preamble was—"to make better provision for the acquisition of land needed for public purposes within the territories in the possession and under the Government of the East India

First complete Act VI of 1857.

Company, *and for the determination of the amount of compensation to be made for the same*". The Act was slightly amended by Act II of 1861 to provide for cases of temporary occupation within one hundred yards for the construction of any road, canal or railway, on the lines of Act XXVIII of 1839 and for enforcement of possession in Presidency towns through the Commissioner of Police.

Act XXII of 1863 for acquisition for Companies.

6. The Act of 1857 or the other preceding Acts or Regulation I of 1824 did not contain any provision for acquisition of land for private Companies, and in 1863 an Act (Act XXII of 1863) was passed with the object, as stated in the preamble, of enabling the Government "to take land for the construction of works of public utility by private persons or Companies" [1]. Section 2

[1] In England the process of legislation has been in the reverse way. "The foundations of the law of compulsory purchase may be said to have been laid about the middle of the 18th century, when coal first came into general use and revolutionised the life of the whole Country. A great forward movement in trade and manufacture was the result of this vital discovery. Machinery began to take the place of hand-labour ; goods were manufactured on a large scale ; there was a great increase in imports of raw materials and export of finished goods ; labour from all parts of the country began to flock to the newly-arisen manufacturing towns" (Adkin and Lawrence : "The Compulsory Purchase Acts," 2nd Ed. page 2). There was a great demand for extended facilities of communication and transport by roads and canals, for removing sand-banks and providing locks. Companies were promoted to carry on these undertakings and a vast amount of money was subscribed for the purpose. It was to facilitate the work of these private Companies that legislation first began in the shape of a Private Bill for each enterprise passed by the Parliament as a Private Act : and between the years 1790 to 1794 there were no less than 81 such Private Acts. The war with France gave a set-back ; but with the cessation of that war and its effects, and then with the introduction of Railways about 1836, a fresh impetus came, followed by a tremendous progress during 1840 to 1850. The general principle in the various Private Acts were consolidated then in what is known as the Lands Clauses Consolidation Act of 1845, (8 Vict. Ch. 18) and the Railways Clauses Consolidation Act (8 and 9 Vict. Ch. 20) also of the same year. It was not till 1919 that a separate Act [The Acquisition of Land (Assessment of Compensation) Act of 1919, 9 and 10 Geo. 5, Ch. 57]

defined a work of public utility for the purposes of the Act as meaning "any bridge, road, rail-road, tram road, canal for irrigation or navigation, work for the improvement of a river or harbour, dock, quay, jetty, drainage work, or electric telegraph" and works subsidiary to such work; and also such other class of works or any particular work other than the above-named which might be declared by the Governor-General in Council as a work of public utility. The Act laid down elaborate procedure for preliminary certification, deposit of caution money etc., but the most important preliminary was an agreement by the promoters to conditions prescribed by the Local Government "having regard to the circumstances of each case, in respect to the provision and payment of the price of the land for the proposed work, the construction, maintenance or working of the same, the regulation of the use of the work as regards the security and convenience of the public" (section 15). The Act (sections 50 and 51) also contained certain provisions regarding mines. In acquisitions under the Act, the right to any mine of coal or other minerals lying under the land taken, would not pass unless compensation for the same had been *expressly* allowed in the award made in favour of the persons interested in the land.

Mineral rights in acquisition under the Act.

7. Both Acts VI of 1857 and XXII of 1863 as well as the amending Act II of 1861 were repealed and replaced by Act X of 1870, the object of which was "to consolidate and amend the law for the acquisition of land needed for public purposes and for Companies, and for determining the amount of compensation to be made on account of such acquisition" (*vide* preamble). The general plan of this Act was similar to Act I of 1894 now in force, but there was a material point of difference in the procedure for deciding a

Act X of 1870.

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was passed for acquisition of land required by a Department of Government or any local or public authority,—more or less as supplementing the above two Acts. There had, however, been several special Acts for special public purposes, also prior to 1919.

reference to Court regarding valuation, viz that the Judge was to hear and decide with the aid of two qualified Assessors, one to be nominated by the Collector and the other by the party. A separate Act (Act XVIII of 1885) was passed in 1885 regarding mines and minerals; and later, the Act of 1870 was replaced by Act I of 1894.

Act XVIII of 1885 relating to mines.

Act I of 1894.

8. The Act of 1894 is now the operative Act. It has been amended on minor matters by the amending Acts IV and X of 1914, XVII of 1919, XXXVIII of 1920, XIX of 1921, XXXVIII of 1923 and XVI of 1933; but there are several local Acts which modify some of the important provisions in the main Act. These Acts are—

Amendments of the Act of 1894: and its modification by certain local Acts.

(1) The City of Bombay Improvement Act IV of 1898 and then the City of Bombay Improvement Trust (Transfer) Act XVI of 1925 (sections 62 to 66);

(2) The Calcutta Municipal Act of 1899 and then the Calcutta Municipal Act III of 1923 (section 375);

(3) The Calcutta Improvement Act V of 1911 (sections 69 to 81 and schedule I); and the Calcutta Improvement Appeals Act XVIII of 1911;

(4) The United Provinces Town Improvement Act VIII of 1919 (sections 56 to 64 and schedule);

(5) The Burma Act V of 1920 for the improvement and expansion of the City of Rangoon (schedule I).

II

9. The procedure for determining the compensation according to Act I of 1894, applicable to acquisitions for a Department of Government or local authority as well as for Companies, is that the Collector tries first to settle the amounts according to the principles laid down in the Act, in agreement with the persons interested. If there is an agreement, the matter ends with the Collector's award. If there is no such agreement, the

Present procedure for determining compensation.

Collector makes his own award, and if any party feels aggrieved he can obtain a reference to the Special Judge[2] where an adjudication would follow as in a Civil Court. Matters of disputed title *inter se* several persons claiming payment of the money, are, unless amicably settled, referred by the Collector to the Special Judge to whom the money is transmitted for disposal according to final decision. When the Collector has made his award and taken possession of the land, the land vests absolutely in Government free from all incumbrances. When the acquisition is made on behalf of a local authority, the Collector, on behalf of Government, makes over the land to such authority ; and when the acquisition is for a Company, the land is transferred by a formal conveyance on terms and conditions settled between Government and the Company.

Procedure under Reg. I of 1824—arbitrators.

10. Prior to the Act of 1894, the procedure, however, was different. Regulation I of 1824 provided that where the local officer of Government could not settle the amount in agreement with the claimants, the matter would be referred to the arbitration of four respectable persons, two of whom would be chosen by an officer of Government authorised for the purpose, and the other two by the claimants. If the claimants failed to nominate any arbitrator, the officer aforesaid would select two impartial residents to arbitrate. The arbitrators when chosen would then give a solemn promise that they would faithfully and impartially discharge the trust imposed on them, and then appoint an umpire. Should they fail to appoint an umpire, the officer aforesaid would choose some respectable and impartial person to act as such. If the arbitrators differed in their opinion and

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[2] For acquisition for the purposes of the Calcutta Improvement Act, 1911 and the United Provinces Town Improvement Act 1919, there is a Tribunal in each place consisting of a Judge and two assessors, one of whom is appointed by Government and the other by the local Municipal body. There was a similar Tribunal called Tribunal of Appeal under the City of Bombay Improvement Act of 1898, but since the transfer of the Trust by the Act of 1925 (which replaces the Act of 1898), this Tribunal has been abolished.

the voices on each side were equal, the decision of the umpire would be "conclusive". In other cases the opinion of the majority would determine the award. The arbitrators would hold their enquiry under the general superintendence of the Judge, Magistrate, Collector or other officer commissioned as aforesaid: and would be given facilities by him to secure attendance of witnesses etc. The arbitrator's report and award were to be submitted to the Governor-General in Council for approval. Otherwise, the arbitrator's award was final and not liable to be impeached except on the ground of corruption or gross partiality, such ground being established on a regular suit in the *Adawlut* (sections 4 to 7). The arbitrators were not authorised to apportion the total award amongst persons holding different interests in the land, unless such persons agreed to such apportionment. Where there was no such agreement, the aggrieved party might "carry the point or points at issue before the Courts in the usual manner," and such Court might "upon due application being made, order the whole or any part of the value paid by Government to be held in deposit to answer an eventual decree", (section 6 clauses *second* and *fourth*). Subject to above, any dispute touching the property or its possession (by Government) would be nonsuited with costs if brought to a Court, (section 6 clause *fifth*).

Arbitrators continued in the Act of 1857.

11. The system of arbitrators was continued in Act VI of 1857 (para 5 *ante*), generally on the lines of Regulation I of 1824 but the number was reduced from four to two, with a third one to be nominated by them, failing which to be nominated by the Collector or other officer authorised for the purpose. The arbitrators were also similarly competent to settle apportionment of the total amount of compensation amongst different claimants, only by consent (sections 10 to 19). If there was no such consent the Collector would invest the money in Government securities (section 29) "until an order of Court was obtained for the payment thereof". Subject to this, the arbitrators' award, which was to specify "the amount and particulars of compensation awarded by them, the persons entitled to compensation, and the

proportions in which they were so entitled", was final and not liable to be questioned "except by a decision of a Civil Court on the ground of corruption or misconduct of the arbitrators" (section 31). Another important provision in the Act of 1857 was that in every case a declaration by the Government was necessary that the land was "required to be taken by Government at the public expense for a public purpose", (section 2).

Arbitrators abolished and Judge with assessors substituted by Act X of 1870.

12. Act X of 1870 abolished the system of "arbitrators". The reason as stated by Hon'ble Mr. (Sir John) Strachey when introducing the Bill, was "that the existing system by which the value of the land required for public purposes was determined by three arbitrators whose award was absolutely final, for there was practically no appeal under any circumstances, had been found to lead to consequences which were altogether preposterous and which often involved a waste of public money which was really scandalous". In its place the Act provided that where the Collector was unable to agree with the persons interested as to the amount of compensation to be allowed (section 15), the Collector would refer the matter for the determination of a Court which would be presided over by a "selected judicial officer" as Judge to be assisted by two qualified assessors, one of whom would be nominated by the Collector and the other by the persons interested. The Court's award, if it was in agreement with the opinion of the assessors, would be final; but if there was disagreement the Judge's view would prevail, but would be subject to appeal to the District Judge or the High Court: (sections 27 to 30 and 35). As a further precaution, this Act for the first time laid down certain general principles for valuing land and for determining compensation for other damages. The Act of 1870 also repealed entirely Act XXII of 1863 regarding acquisition for Companies. A separate law was considered superfluous and the necessary provisions were made in Chapter VII of the Act.

13. The provisions in the Act of 1870 laid down more detailed rules for the procedure at various stages than the Act of

1857 and these form the basis of Act I of 1894 which is now in force. The main change made by the Act of 1894 was that the system of "assessors" introduced by the Act of 1870 was abolished, and the duty of determining the amount of compensation, when not accepted by the party, was entrusted to the Judge, the party having the right of appeal in all cases. The Hon'ble Member when introducing the Bill pointed out that the Act of 1870 required "qualified" assessors, but it was impossible to obtain persons "qualified by education and by practical experience of the matters on which they are required to pronounce their opinion". What happened in practice was that the person interested appointed an assessor who was "virtually pledged beforehand to endeavour to protect and advance his interests". Moreover, in heavy cases the claimant's assessor was accustomed to receive "additional fees by private arrangement". Under such circumstances it was idle to suppose that the employment of assessors could in any way assist the Judge in the discharge of his responsibility.

Assessors abolished by the Act of 1894 and provisions made for appeal.

14. One important change in the matter of procedure, made by the Act of 1894, is that the previous rule of compulsory reference in all cases where there was disagreement amongst the several claimants as regards apportionment, has been abolished. The Collector may make an apportionment amongst the claimants, and if any of them is aggrieved, it is open to him to apply to the Collector for a reference to Court, within the time specified in section 18.

Change in the procedure of reference.

15. The rules of procedure in land acquisition, aim at, as they should, securing expedition and finality, so far as possible consistently with the primary object of ensuring that all persons interested in the land are adequately compensated for any loss they suffer. An amendment of the Act of 1894 by Act XXXVIII of 1923 which introduces a stage of formal enquiry before declaration under section 6, about any objections to the

Objectives of the rules of procedure:

proposed acquisition itself, allowing at least one month's time for filing such objections, in one sense implies a delaying stage, but in another sense it does not go far enough ; for the right to object is limited only to the persons interested in the land. But it may be that objections which should weigh more with the authorities are such as may come from others. In any case the Collector had, even before the amendment, to make an enquiry, though in an informal manner, and certify, for the satisfaction of Government, that there was no objection to the acquisition on public, communal, religious or similar general grounds.

-expedition ;

16. More important is the point of "finality." The title on acquisition must be perfect and not questionable later on any ground. This was recognised, though somewhat vaguely, in the earlier legislations in which provision was made, as already stated, that any such question raised in the Courts later would be non-suited. The position was made clear first by section 8 of the Act of 1857 and then by section 16 of the Act of 1870 which laid down that when the Collector took possession of the land in a proceeding under the Act, it would thereupon vest absolutely in the Government free from all incumbrances. This is repeated in Act I of 1894 also.

-finality.

III.

17. The first attempt to lay down rules in the statute indicating the principles of compensation was in sections 24 and 25 of the Act of 1870. Section 6 of Regulation I of 1824 required the determination of "a fair value for the whole property proposed to be assumed or destroyed in the execution of the public work in hand, or which will otherwise be lost to the owners *or affected by reason of the appropriation* by Government" ; and further explained that besides "fixing the value of the net rent derived by the Sudder Malguzar, from the land taken for public purposes", the arbitrators should also

Development of statutory rules indicating principles of valuation and compensation.

determine "the value of other interests possessed therein, as to regulate the two that the whole shall constitute what would have been a fair value for the property, supposing it to have been *lakheraj* and free of all burthen or encumbrance" (clause *sixth*). Act VI of 1857 laid down (section 26) that besides the value of the land taken, "damage which may be sustained by any of the persons interested therein in respect of any adjoining land held therewith" should also be compensated for. This followed sections 49 and 63 of the Lands Clauses Consolidation Act which had been passed in England 12 years earlier. The same principle was carried to clauses *secondly* and *thirdly* of section 24 of Act X of 1870 and then to clauses *thirdly* and *fourthly* of section 23(1) of the Act of 1894. Following the provisions in section 68 of the English Railways Clauses Consolidation Act of 1845, collateral provision is made in section 11 of the Indian Railways Act IX of 1890 for what are called "accommodation works"[3] to be done by the Railways, which to some extent meet claims otherwise justifiable for such injurious affection.

Indication of matters not to be taken into consideration: its necessity.

18. What, however, was more necessary was to indicate for the guidance of the assessors and Courts, what matters they were not unlikely to mix up but which must not be taken into consideration in assessing compensation. The principles were borrowed from the decisions already given then by the Courts in England and were embodied first in section 25 of the Act of 1870 and then carried into section 24 of the Act of 1894 which is now in force. Any disinclination on the part of the person interested to part with his property is not to affect the amount of compensation, and damage which

[3] Such as provision for crossings, arches, culverts, passages over, under or by the sides of or leading to or from the railway as may be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands in the tract across which the railway is made; and also necessary arches, tunnels, drains, water-courses or other passages—sufficient at all times to convey water as freely from or to the lands lying near or affected by the railway as before the making of the railway or as nearly so as may be.

would not be actionable if done by a private person is to be ruled out. While any decrease in the value of other lands of the person interested due to the acquisition would be compensated for, any increase in the value of such other lands is not to be taken into account. There are also rules regarding treatment of outlay or improvement after the date of the declaration.

IV

No mention of mines in the early enactments.

19. There is no mention of mines or minerals in the earlier Acts or Regulations relating to acquisition of land. The first mention was in sections 50 and 51 of Act XXII of 1863 which was a special Act for acquisition of lands for works of public utility to be constructed by private persons or Companies. Section 50 laid down that mines or minerals, "except only such part thereof as shall be necessary to be dug or carried away or used in the construction of the works" would not pass with the acquisition "unless compensation for the same shall have been expressly allowed in the award made in favour of the persons interested in the land." This followed almost literally section 77 of the English Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. ch. 20). It was probably by oversight that no corresponding provision was made in Act X of 1870, although that Act repealed the Act of 1863 and incorporated in it other necessary provisions regarding acquisition for Companies. The defect was remedied later by the Land Acquisition (Mines) Act XVIII of 1885. The special provisions in this Act apply not merely to acquisitions for Companies, but also to all acquisitions for a Department of Government or a local authority. It, however, reverses the plan of the Act of 1863 or the English Railways Clauses Consolidation Act of 1845, and lays down that if the Local Government thinks it fit, it may insert a statement in the declaration under section 6 that "mines of coal, iron-stone,

First mention in Act XXII of 1863;

but omitted in Act X of 1870.

Restored with *modification by* Act XVIII of 1885.

slate or other minerals lying under the land or any particular portion of the land, except only such parts of the mines or minerals as it may be necessary to dig or carry away or use in the construction of the work for the purpose of which the land is being acquired, is not needed." Any omission to make such statement may be made good at a later stage when the Collector makes his award or reference to Court, or when in urgent cases he takes possession before award.

Provisions for the safety of surface-works when mines and minerals are excluded from acquisition.

20. When such a statement has been made, mines and minerals, save such as are excepted in the statement, do not pass with the acquisition of the land. But if the working of such mines endangers the safety of the works (e. g. a railway) on the surface, the persons entitled to work them may be restrained from working the mines or from working them except under certain restrictions. The Act lays down procedure for enforcing these conditions, following generally the procedure in the English Railways Clauses Consolidation Act of 1845 (sections 78 to 85). In such case the Railway Company or other authority seeking to impose restraint must compensate such persons for the loss they may sustain or the additional expenses they may have to incur by reason of such restraint or restriction.

V

21. Land acquisition necessarily implies forcible expropriation of private rights in the land acquired : and while one fundamental principle is that such action on the part of the State must be justified by public reasons on the doctrine of *salus populi suprema lex*, the importance of the law on the subject lies in the fact that it restrains the executive authorities of the State against arbitrary exercise of this power. The general principle that "every violation of a right of ownership which causes damage gives rise to a liability to make compensation to the owner for the damage done and is tort", is made applicable equally when the violation is sought by the State, even on

public ground. Another recognised principle is that no such expropriation can be made by the State, save by authority of law. These principles are summed up in section 299 of the Government of India Act, 1935 (25 and 26 Geo. 5, Ch. 42). The section is quoted below :—

Compulsory acquisition of land, &c. in the Govt. of India Act, 1935.

299. (1) No person shall be deprived of his property in British India save by authority of law.

(2) Neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any Company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined.

(3) No Bill or amendment making provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein, including rights or privileges in respect of land revenue, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of Governor-General in his discretion, or, in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

(4) Nothing in this section shall affect the provisions of any law in force at the date of the passing of this Act.

(5) In this section "land" includes immovable property of every kind and any rights in or over such property, and "undertaking" includes part of an undertaking.

THE LAND ACQUISITION ACT, 1894

(I OF 1894)

CONTENTS.

PART I.

PRELIMINARY.

PART II.

ACQUISITION.

Preliminary Investigation.

Objections.

Declaration of intended Acquisition.

Enquiry into Measurements, Value and Claims, and Award by the Collector.

SECTIONS.

Taking Possession.

PART III.

REFERENCE TO COURT AND PROCEDURE THEREON.

PART IV.

APPORTIONMENT OF COMPENSATION.

PART V.

PAYMENT.

SECTIONS.

PART VI.

TEMPORARY OCCUPATION OF LAND.

PART VII.

ACQUISITION OF LAND FOR COMPANIES.

PART VIII.

MISCELLANEOUS.

SECTIONS.

ACT No. I OF 1894.

An Act to amend the law for the acquisition of land for public purposes and for Companies.

WHEREAS it is expedient to amend the law for the acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition. It is hereby enacted as follows :—

For a history of the development of legislation on land acquisition both in India and in England, see "Introduction."

Plan of the Act—Cases of public purposes and Companies combined.

2. The Act of 1894 amended and replaced [1] the earlier Act of 1870 which had consolidated the previous legislations comprising mainly Act VI of 1857 relating to acquisition of land for public purposes and Act XXII of 1863 relating to acquisition for "Companies". The same plan is continued in the Act of 1894, certain special provisions only being made for "Companies" in Chapter VII.

Public nature or usefulness to the public—always necessary.

3. The object of the Act as stated in the preamble is to amend the law for the acquisition of land needed for—(i) public purpose and (ii) companies. The expression "public purpose" is put as distinct from "Companies", but later in section 40 (1), the purposes for which the application of the Act may be justified in case of Companies, are stated as works which

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1 For statement of Objects and Reasons, see Gazette of India, 1892, Pt. V, p. 82 ; for Report of the Select Committee, see ibid, 1894, Pt. V. p. 28 ; and for Proceedings in Council, see ibid, 1892, Pt. VI, p. 25, and ibid, 1894, pp. 19, 24 to 42.

are "likely to prove useful to the public", including (as added later in 1933) "erection of dwelling houses for workmen employed by a Company". The preamble to the English Lands Clauses Consolidation Act of 1845 states the scope of the Act as "relative to the acquisition of land required for undertakings or works of a *public nature*," both for acquisition for Government Departments (including local authorities) as well as for Companies. The Acquisition of Land Act of 1919 (9 & 10 Geo. 5 Ch. 57) made certain special provisions for acquisition for "public purposes" (vide its preamble), while in its section 1 (1), these purposes are explained as comprising acquisitions "by any Government department or any local or public authority."

Rules regarding compensation not exhaustive.

Principles of English law.

4. The preamble also refers to the Act as amending the law "for determining the amount of compensation" in land acquisition proceedings. The provisions are contained mainly in sections 23 and 24; but, as will be explained in the notes under section 23, these provisions are not exhaustive; and in cases not covered by the express provisions in the Act, the Courts in India have, in exercising their inherent power of applying "equity, justice and good conscience," followed as far as possible, the rules adopted in similar circumstances under the law in England [2].

Amendments.

5. Since 1894, the Act has been amended by several Acts, viz.—

Act IV of of 1914	—for section 55.
Act X of 1914	—for section 2.

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[2] *Madhusudan Das vs. Collector of Cuttack*, (1901) 6 C.W.N. 406, in which it has been observed that English cases are useful guides to the Courts in construing this Act, as it is based in many substantial respects on the principles of law which hold good in similar cases in England. But care has to be taken to avoid confusion which may happen where the English and Indian laws are not in pari materia : *Ezra vs. Secy. of State*, 30 Cal. 36, 7 C. W. N. 249, 32 Cal. 605, (P. C.), 9 C. W. N. 454, 32 I. A. 93 : *Collector of Dinajpur vs. Girija Nath*, 25 Cal. 346 : *Secy. of State vs. Md. Ismail Khan*, A.I.R. 1927 All. 246, 100 I.C. 749, 49 All. 858, 25 A.L.J. 177.

Act XVII of 1919	—for section 3 (e).
Act XXXVIII of 1920	—for sections 38 (1) and 55.
Act XIX of 1921	—for sections 26 (2) and 54.
Act XXXVIII of 1923	—for sections 4 (1), 5A, 6, 11, 17 (4), 23 (1), 24 (Seventhly) and 40 (1).
Act XVI of 1933	—for sections 38A, 40 (1) (a) & (b) and 41.

These amendments do not apply to the earlier Special Acts (vide para 3 below) in which the operation of the Act of 1894 is inducted by specific provisions [3] in those Special Acts.

Basis of Act —salus populi suprema lex.

6. The Land Acquisition Act in one sense directly interferes with the ordinary rights of volition of private owners regarding disposal of their property. The justification for it is the doctrine of "*salus populi suprema lex*";—the interests of the public are paramount, and to such interests private interests may have to be subordinated, when the State thinks it proper[4]. How far the compulsory procedure sought to be applied is justifiable in a particular case is thus always a question of great importance. In England, in the case of private undertakings, a private Bill had to be introduced and ratified by Parliament, and in the Lands Clauses Consolidation Act of 1845, the essential requirement that the undertaking or work should be of a "public nature" is put to the fore-front in the preamble [5]. Special precaution is thus taken in the Indian Act (sections 40—41)

Safeguards to ensure the above —(i) in the procedure before declaration for acquisition.

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[3] *Secy. of State vs. Hindusthan Co-Operative*, 59 Cal. 55, 48 I. A. 259, in which the principle enunciated is that where the operation of an Act is inducted by special provisions in a later Act, any subsequent amendment of the first Act does not operate on the later Act unless otherwise expressly provided.

[4] *Balawant Ramchandra vs. Secy. of State*, (1905) 29 Bom. 480: *Ezra vs. Secy. of State* 30 Cal. 86.

[5] If there is any doubt in the matter the Act would be construed in favour of the land-owners in case of acquisition for Companies, but in the case of local authorities carrying out public improvements, the interest of

for a special enquiry, agreement and order of the local Government, to ensure that the works for which an acquisition is sought by private promoters are such as are likely to be useful to the public to an extent that the application of the Act may be justified. Even in cases of acquisition for a Government department or a local authority there is provision for special enquiry about any objections (section 5A *post*), and in every case the orders of the Government and a declaration by the Government that the purpose is a public purpose, are necessary (secs. 6-7). The Local Government is, however, the final arbiter [6] on the question, but in a case of acquisition for a local authority the purpose must be one which is sanctioned by the statutory powers and obligations of such authority, and if it is outside, the Civil Court has jurisdiction to interfere [7].

(ii) the interpretation for determining compensation.

7. For all the above reasons, the provisions for compensation in compulsory acquisition are necessarily framed on liberal lines, the basic idea (as in England) being that every person who suffers any loss by reason of the acquisition, must be adequately compensated [8]. It has accordingly been held that the Act must

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the public as well as of the landowner would be considered in construing a doubtful provision: *Galloway* vs. *London Corp.* (1866) L. R. 1 H. L. 84, 11 Digest 117. Halsbury 2nd. Ed. Vol. 6 art. 28. But see also foot (6) post.

[6] *Ezra vs. Secy. of State, ibid.* Compare the later development in England of what is called "the system of absolute orders" under which the order made by the Department of Government is final. See Adkin and Lawrence 2nd. Ed. pages 8-10. This departmental order can be questioned in the High Court, only on the grounds that it is not within the powers of the Act or that any requirement of the Act has not been complied with, and not otherwise: Halsbury, 2nd. Ed. Vol. 6, p. 11 refering to the English Housing Act of 1930 and Small Holdings and Allotments Act of 1908. *R. vs. Minister of Health, Exparte Davis* (1929) 1 K. B. 619 C.A.

[7] *Shastri Ramchandra vs. Ahmedabad Municipality*, 24 Bom. 600. See also notes under sec. 3 (d) and 6 post. Also foot (6) above re. the procedure in England where the order must be within the powers of the Acts applying.

[8] "All persons who are deprived of any interest in land to be purchased or taken are entitled under the Lands Clauses Acts to receive compensation for such loss as they may sustain"—Halsbury, 2nd. Ed., Vol. 6 art. 36.

be construed strictly in favour of the subject [9]. But if upon words or expressions at all ambiguous it would seem that the balance of hardship or inconvenience would be strongly against the public on the one construction or strongly against a private person on another construction, it is consistent with all sound principles to pay regard to that balance of inconvenience [10]. On the point of construction, the following quotation from Maxwell is pertinent :—

"Where the language of a statute in its ordinary and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment or to some inconvenience or absurdity, hardship or injustice presumably not intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence [11]."

To illustrate :—Clauses thirdly and fourthly of section 23 (1), mention only damages sustained at the date of the Collector's taking possession : but the Courts have held (following the principles of English law) that compensation is payable for anticipated damages to other lands by the use of the land acquired, for the execution of the declared purpose of acquisition if such use is otherwise actionable. See notes under the above clauses *post*.

Section 18 of the Lands Clauses Consolidation Act of 1845 requires promoters to treat for the purchase of the land (corresponding to market-value under section 23 (1) first, of the Indian Land Acquisition Act of 1894) and also for compensation to all persons for the damage that may be sustained by them (corresponding to this are the provisions for damages indicated in clauses secondly to sixthly of sec. 23 (1)). Section 68 of the English Act indicates compensation "in respect of any lands, or of any interest therein which shall have been taken for or injuriously affected by the execution of the works." These general principles are not affected by the Acquisition of Land etc. Act of 1919, (9 & 10 Geo. 5, Ch. 57), vide sec. 2 (6) of that Act.

[9] *Kam Saran Das vs. Collector of Lahore*, 9 I. C. 228, 9 P. W. R. 1911 : *Paramananda vs. Secy. of State*, 44 Pun. R. 1904 citing *East & West India Dock etc. Rly. Co., vs. Gattke*, (1851) 3 Mac. & G. 155. 11 Digest 182, 202.

[10] In re. *Government and Nanu Kothare & Ors.*, 30 Bom. 275 at 282, quoting from *Dixon Ltd. vs. Caledonian & Glasgow etc.* (1880) 5A. C. 820 at 827.

[11] *Government of Bombay vs. Esufalli* (1908) 34 Bom. 618.

8. In interpreting the intention of the Legislature a construction necessary to effectuate the primary intention of the Land Acquisition Act viz. promoting important public interests, must be given effect to[12]. Where more than one construction of a statute is possible, it is quite legitimate to select that one which will best carry out the scope of the legislation[13], although, to start, the question is not what may be supposed to have been intended but what has been said. If a provision be of doubtful import it may be perfectly legitimate to examine how the law previously stood and so forth, though ordinarily the proper course is in the first instance to examime the language of the statute and to ask what is its natural meaning[14].

Interpretation —general.

9. On the other hand one recognised principle of interpreting special statutes is that where such a statute, as the Land Acquisition Act, provides definitely for a particular remedy the party is strictly confined to such remedy and the procedure for such remedy, and no separate action lies[15]. This throws a duty on the private individuals, that is to say that they ought, where it becomes necessary, to come forward of their own initiative before the acquiring authorities when any interest of theirs is involved which is not very patent and may not unlikely be missed[16].

Disability and hence duty of private individuals.

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[12] *Balwant Ramchandra vs. Secy. of State* 29 Bom. 480.

[13] *Brophy vs. Attorney General of Manitoba* (1895) A. C, p. 216 per Halsbury L.C.

[14] *Bank of England vs. Vagliano Bros.* (1891) A.C. 144, per Lord Herschell.

[15] An individual cannot maintain an action and is without remedy unless a remedy is provided by the statute: *East Fremantle Corporation vs. Annois* (1902) A.C. 218, P.C., at p. 217 (38 Digest 28, 158): *Hammersmith and City Rail Co. vs. Brand* (1869) L.R. 4 H.L. 171 (11 Digest 106, 28): *London, Brighton etc. Rail Co. vs. Truman* (1885) 11 App. Cas. 45 (11 Digest 119, 129).

[16] See notes under secs. 9 and 18 *post*, and the observation of Chandravarkar J. in re. *Government and Nanu Kothare*, 30 Bom. 275 at p. 282.

PART I.

Preliminary

1. (*1*) This Act may be called the Land Acquisition Act, 1894.

(*2*) It extends to the whole of British India; and

(*3*) It shall come into force on the first day of March, 1894.

British India —Scheduled Districts.

"British India" as defined in Sec. 3 (7) of the General Clauses Act X of 1897, means—"all territories and places within His Majesty's dominions which are for the time being governed by His Majesty through the Governor-General of India or through any Governor or other officer subordinate to the Governor General of India." The Act, however, does not by its own operation apply to "Scheduled Districts." Before it can apply to such districts a notification of the Local Government under sec. 3 or 5 of the Scheduled Districts Act XIV of 1874 is necessary. A list of the scheduled districts where the Land Acquisition Act has been put into force by such notification or otherwise is given in the footnote[1]. The Act has also been declared in force in

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[1] The Act has been declared in force in—

(*1*) Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898). s. 4, Burma Code :

(*2*) Sonthal Parganas by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3, B. and O. Code :

(*3*) Angul District by notification under s. 8 of the Angul Laws Regulation, 1913 (3 of 1913) B. and O. Code.

The Act has also been declared by notification under the Scheduled Districts Act, 1874 (14 of 1874) to be in force in (1) the Districts of Hazaribagh, Lohardaga (now called the Ranchi District—*see* Calcutta. Gazette, 1899, Pt. I, p. 44) and Manbhum, and in Pargana Dhalbhum and the Kolhan in the District of Singhbhum—*see* Gazette of India, 1894. Pt. I, p. 400; and (2) the District of Palamau, *see* Gazette of India, 1894, Pt. I, p. 689.

It has been extended to British Baluchistan, by notification under s. 3 of the British Baluchistan Laws Regulation, 1913 (2 of 1913), *see* Bal. Code.

This Act has been modified in its local application by certain Acts passed by some of the Provincial Legislatures.

Upper Burma (except the Shan States) by the Burma Laws Act XIII of 1898.

Modifications of certain provisions of the Act by certain Special Acts for the purposes of those Acts.

2. Several provisions of the Act are subject to modifications as made by certain Special Acts when these are applied to acquisition for the purposes of those Acts. These Special Acts are :—

The City of Bombay Improvement Act of 1898.

The City of Bombay Improvement Trust (Transfer) Act of 1925.

The Calcutta Improvement Act of 1911.

The United Provinces Town Improvement Act of 1919.

The City of Rangoon Improvement Act of 1920.

The City of Bombay Municipal Act of 1888.

The Calcutta Municipal Acts of 1899 and 1923.

These modifications have been reproduced in Appendix I *post*. The amendments of the Land Acquisition Act of 1894 subsequent to the dates from which the above Special Acts came into force are not however applicable to acquisitions under these Special Acts[2].

2. (*1*) * * * *

(*2*) All proceeding commenced, officers appointed or authorized agreements published and rules made under the [Land Acquisition Act, 1870] shall, as far as may be, be deemed to have been respectively commenced, appointed or authorised, published and made under this Act.

(*3*) Any enactment or document referring to the [Land Acquisition Act, 1870] or to any enactment thereby repealed shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

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[2] *Secy. of State vs. Hindustan Co-Operative Insurance Society Ltd.*, 59 Cal. 55, 58 I.A. 259.

Sub-Section (1) which was repealed by Act X of 1914, read as follows :—

"The Land Acquisition Act of 1870 and Section 74 of the Punjab Act, 1884, are hereby repealed."

2. Sub sec. (2) validates proceedings taken up under the old Act of 1870, but which were continuing when the Act of 1894 came into force[1].

3. Sub-sec. (3) lays down that enactments and documents (i.e. those prior to the Act of 1894) which referred to the Act of 1870, should be taken, so far as may be, as having reference to the Act of 1894.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(*a*) the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth :

(*b*) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act ; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land :

(*c*) the expression "Collector" means the Collector of a district, and includes a Deputy Commissioner and any officer especially appointed by the Local Government to perform the functions of a Collector under this Act :

(*d*) the expression "Court" means a principal Civil Court of original jurisdiction, unless the

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1 *Balaram Bhramaratar vs. Sham Sunder Narendra*, 28 Cal. 526 : *Nabin Chunder Sarma vs. Dy. Commissioner of Sylhet*, 1 C.W.N. 562 : *Vasyed Sevai vs. Teshildar of Peria Kulum*, 6 M.L.J. 122.

Local Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act :

(e) the expression "Company" means a Company registered under the Indian Companies Act, 1882,[1] or under the (English) Companies Act, 1862 to 1890, or incorporated by an Act of Parliament or of the Governor General in Council, or by Royal Charter or Letters Patent [2] [and includes a society registered under the Societies Registration Act, 1860, and a registered society within the meaning of the Co-operative Societies Act, 1912] :

XXI of 1860.

II of 1912.

(f) the expression "public purpose" includes the provision of village-sites in districts in which the Local Government shall have declared by notification in the official Gazette that it is customary for the Government to make such provision ; and

(g) the following persons shall be deemed persons "entitled to act" as and to the extent hereinafter provided (that is to say)—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability :

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[1] *See* now Act 7 of 1913.

[2] These words and figures were added by s. 2 of the Land Acquisition (Amendment) Act, 1919 (17 of 1919).

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age: and

the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics, or idiots themselves, if free from disability, could have acted: Provided that—

(*i*) no person shall be deemed "entitled to act" whose interest in the subject-matter shall be shown to the satisfaction of the Collector or Court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act;

(*ii*) in every such case the person interested may appear by a next friend, or, in default of his appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof;

(*iii*) the provisions of Chapter XXXI of the Code of Civil Procedure shall, *mutatis mutandis*, apply in the case of persons interested appearing before a Collector or Court by a next friend, or by a guardian for the case, in proceedings under this Act; and

(*iv*) no person "entitled to act" shall be competent to receive the compensation-money payable to the person for whom he is entitled to act, unless he would have been competent to alienate the land

and receive and give a good discharge for the purchase-money on a voluntary sale.

Meaning of land same as under the English law.

The definition of "land" in the Act of 1894 is the same as in the Act of 1870, both accord with section 3(25) of the General Clauses Act XIII of 1885. The definition of "land" in the intepretation clause (sec. 39) of the Act of 1857 was :—"The word "land" shall extend to tenements and hereditaments of any tenure and all houses, buildings, trees or appurtenances thereupon, as well as land". This followed section 3 of the English Lands Clauses Consolidation Act of 1845, which interpreted land as extending to "messuages, lands, tenements and hereditaments of any tenure"[3].

Meaning wide and comprehensive—

2. The intention throughout in all these legislations is to give the widest meaning to "land". The word used in the Act of 1894 (as well as in the Act of 1870) is "includes", and this aims at making it clear that besides the ordinary legal meaning of "land", it includes all benefits to arise out of land as well as things attached to the earth or permanently fastened to anything so attached. In this sense the definition is not exhaustive[4]. In its general sense, "land" as a corporeal thing comprehends not only the soil but "every species of ground on earth, meadows, pastures, woods, moors, water, marshes, furze and earth ; it includes houses, mills, castles, buildings and besides an indefinite extent upwards,

—includes all corporeal things as buildings, trees, mines and minerals.

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[3] The word "messuage" includes a house with the land on which it stands ; "tenement" is a stronger word, including not only lands and buildings, but also such things as rents, commons, and profits a prendre issuing out of land ; "hereditament" has a still wider meaning and embraces anything which can be inherited, whether corporeal, such as lands, or incorporeal, such as future rights in land, or easement. The definition is a very wide one, and has been held to include, amongst other forms of property, mines, minerals, water and easements.—Adkin and Lawrence, "The compulsory purchase Acts" 2nd. Ed. p. 2.

[4] *The Official Assignee, Bombay* vs. *Chandulal Chimanlal*, 76 I. C. 657.

it extends downwards to the globe's centre"—Wharton's Law Lexicon[5]. These includes mines and minerals[6] and water[7] (tanks), and the last items viz. houses etc. are covered also by the words "attached to the earth" which include trees[8] and surface-minerals as well as things like sand and sand-stone[9]. The expression "permanently fastened to anything attached to the earth" covers machineries so fastened, as well as "fixtures" as in a shop. The expression "benefits to arise out land" covers all that is meant by "tenement" and "hereditament" in the English law, including subordinate tenancies or leases, rents and profits, easements (as of way, light, air or water) over the land, fishery etc., and also mortgages or other charges or liens, beneficiary or reversionary interests attached thereto and so forth. The definition thus includes all incorporeal rights on the land as well. The market-value of the "land" to be determined under section 23(1) clause first has therefore to comprise all these interests; so that when the acquisition is completed and

and also all incorporeal rights in the land and in all such things.

Land on acquisition is to vest absolutely free from all incumbrance—

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[5] In re : *Metropolitan District Rail Co. and Cosh* (1880) 18 Ch. D. 607, (11 Digest 283, 2110), per Jessel M.R.—that "the word land includes everything from the heaven on one side to the centre of the earth on the other."

[6] *Holliday* vs. *Wakefield Corporation* (1891) A. C. 81 (11 Digest 157, 878) : *Smith* vs. *Great Western Rail Co.* (1877) 3 App. Cas. 165 (11 Digest 156, 868) : *Errington* vs. *Metropolitan Dist. Rail Co.* (1882) 19 Ch. D. 559 (11 Digest 107, 39) : *Gerard* (Lord) & *London and N. W. Rail Co.* 1 Q.B. 459.

[7] Land is no less land because it is covered with water : *Reg.* vs. *Leeds and Liverpool Canal Co.* 7A & E 685.

[8] *Sub-Collector Godavari* vs. *Seragam Subbaryadu* (1906), 30 Mad. 151 : *Collector of Bareily* vs. *Sultan Ahmed*, A. I. R. 1926. All. 689, 95 I. C. 150, 48 All. 498.

[9] Under the English law, sand and sand-stone on the surface constitute the land itself : *Glasgow Corp* : vs. *Farie* (1888) 13 App. cas. 657 (11 Digest 151, 887) : *North British Rail Co.* vs. *Budhill Coal and Sand-stone Co.* (1910) A.C. 116 (11 Digest 151, 885).

possession is taken, the land may vest absolutely in the Government free from all incumbrances, as provided for in section 16 *post.*

hence the aggregate of all interests must be included, and not a partial interest.

3. It follows that only a partial interest in the land cannot[10] be acquired, at any rate not in a manner as would not give the above legal effect, viz. absolute vesting of the land in the Government free from all incumbrances. This is also the general principle of land acquisition under the English law viz. that the effect must be an *absolute purchase* of the land (sec. 6, Lands Clauses Consolidation Act, 1845). The promoters, however, are permitted to purchase a limited interest by agreement[11] with the owner when such limited interest is sufficient for the purpose for which they need the land ; but this branch of the English law, viz. acquisition by agreement, has not been made any part of the Indian Land Acquisition Act. It is, in India, a subject of private contract in the case of companies ; and in the case of local authorities or like statutory bodies, of special provision in the Acts constituting such bodies,[12] for purchase of partial interest, and not a matter of acquisition under the Land Acquisition Act.

Exceptions-(1) Mines and minerals.

4. An exception is made for mines and minerals, by the Land Acquisition (Mines) Act XVIII of 1885. In acquisition of land required for the use of the surface only (e. g. a railway), the Local Government may exclude under-ground mines and minerals from acquisition and may make a statement that these

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[10] *Bombay Improvement Trust* vs. *Jalbhoy* (1908), 33 Bom. 488 : *Collector of Belgaum* vs. *Bhima* (1908) 10 Bom. L. R. 657 : *Collector of Dacca* vs. *Asraf Ali*, A. I. R. 1933 (Cal.) 812, 148 I.C. 367, 56 C. L. J. 558 : *Prag Narain* vs. *Collector of Agra*, 59 I. A. 155, 54 All. 286, 36. C.W.N. 579.

[11] *Stourcliffe Estates Co.* vs. *Bournemouth Corp.* (1910) 2 Ch. 12., (11 Digest 120, 181).

[12] For example sec. 62 of the Bombay Improvement Trust (Transfer) Act of 1925 which authorises the Trust to purchase partial interests by direct arrangement with the owner.

are not needed, in which case mines and minerals will not be acquired.

Somewhat analogous are the provisions in sections 11-13 of the Indian Railways Act IX of 1890, which provide for accommodation-works by the Railway in lieu of acquisition of easement rights (as of water for drainage etc., way and so forth) over the land acquired or affected by the user of the land for the purpose for which it is acquired.

(ii) Railways accommodation works.

It has also been held by the Bombay High Court[13] that although the general plan of the Land Acquisition Act is to acquire and compensate *for* all interests[14] in the land, there is no insurmountable objection to acquire only the outstanding interest (as of a tenant) where the rest of the interest is owned and possessed by the Crown (i. e. the Government). As to the position of Government in respect of Crown lands in land-acquisition, see para 7 of the notes under section 3 (b)- "persons interested."

(iii) in case of Crown Lands.

Another exception would arise when the land acquired is the dominant tenement with an easement (*e. g.* a right of way) over another land (not acquired) which is the servient tenement. Here the compensation paid to the owner of the land acquired (the dominant tenement), would comprise such value of it as is calculated on the existence of the right of way over the unacquired land, and it would follow that such right of way would pass to the acquiring body along with the land acquired.

(iv) where the land acquired as a dominant tenement has an ease-ment over another land (servient) not acquired.

The position is, however, different when such easement right is not, at the time of acquisition, attached to or enjoyed by the land which is acquired, but which the acquiring body wants to secure independently. It would be a case of acquisition of a right independent of any right attached to the land

Whereindependent easement right is sought, differentiated.

[13] *Government of Bombay* vs. *Esuf Ally* (1909), 34 Bom. 618.
[14] See footnote (10) ante.

acquired at the time of acquisition; and such partial right[15] (as a right of way, or right to drive a tunnel, or right to draw or drain water) cannot be compulsorily acquired without acquiring the land over which such right is sought. So a fishery right only[16] cannot be acquired separately from the land over which it exists.

Meaning of "attached to the earth".

5. The expression "attached to the earth" is defined in section 3 of the Transfer of Property Act IV of 1882 as meaning things "rooted to the earth, (as in the case of trees and shrubs), imbedded in the earth (as in the case of walls or buildings) or attached to what is so imbedded, for the permanent beneficial enjoyment of that to which it is attached". Trees therefore go closely with land, and their value has to be included in the market-value of land as under clause first, section 23 (1), that is to say the additional compensation of 15 p. c. has to be allowed on it under section 23 (2); so also as regards buildings, and other structures on the land. "Standing crops" come under clause secondly of section 23 (1). i.e. not as part of "land." "Bamboos" have been held[17] to be trees and as such part of land within the meaning of the first clause. The reason given is that bamboos are used in building and repairing houses and must therefore be treated as timber. If so, thatching grass would also be "trees". Probably a better test is whether the growth is only of a seasonal (yearly) nature, and such as would ordinarily be cut away at the end of the season.

Standing crops.

Thatching grass.

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15 Barring cases of purchase of such partial right by agreement, this is also the law in England when compulsory acquisition is sought. See Halsbury, 2nd Ed. Vol. 6 article 25.

16 *Raja Shyam Chandra Mardraj* vs, *Secy. of State* (1908), 35 Cal. 525, 12 C. W. N. 569.—"Land is defined in the Act as *including* benefits arising out of land, etc., but "land" is not defined as *meaning* benefits arising out of land; and therefore, it is only land including the rights arising out of it, but not the rights detached from the land that can be acquired under the Act."

17 *Maharaja Sir Rameswar Singh* vs. *Basudeva Singh*, A. I. R. 1928 Pat. 95, 60 I.C. 521.

6. In the category "*permanently fastened* to a thing attached to the earth" come "machineries", and the main question for determination in each case is whether the fastenings are of a nature which may be said to be "permanent." The question is important not simply for deciding whether the additional compensation of 15 p.c. under section 23(2) has to be allowed, but also for the more important question whether these have to be valued as standing machineries or whether all that the party may claim is damage for removal and refitting. The epithet "permanently" is used as an antithesis to "temporary", and in the case of *Secretary of State* vs. *Tarak Chandra Sadhukhan*[18] it was held that an oil-mill plant consisting of a boiler standing on masonry and built round with masonry or wood although removeable for the purpose of repairs, was a thing permanently fastened within the meaning of this section.

Meaning of permanently fastened.

Machineries—oil mill.

In this category come also "fixtures" or special fittings as in a theatre, shop etc. Mere special sizing for the beneficial enjoyment of the accommodation provided in the building is not the criterion. The legal test is *permanently fastened* to a thing which is attached to the earth.

Fixtures.

Clause (b)—Person Interested

"Persons interested" would be of varying description, and section 3(b) does not profess to give any exhaustive definition so as to include all kinds of possible rights and interests in the land. What it intends to make clear is that the expression as used in the Act includes any person *claiming* an interest, whether it be a valid claim or not. The reason for this is that the Collector is not competent to decide whether a claim is valid or not ; he can only refer such claim to the Court (secs. 18 &

Object of the definition to include all claims, valid or not.

[18] 54 Cal 582, 31 C.W.N. 950, 45 C.L.J. 589, A.I.R. 1927 (P.C.) 172, 103 I.C. 866, 54 I. A. 137, 53 M.L.J. 92 (P.C.), 29 Bom. L.R. 953.

30 *post*). He is, therefore, bound to treat every person putting forward a claim, as a "person interested" and include him in his award under section 11, even though he may award "nil" for him; and such person will also be entitled to notice under section 12(2). See also sections 9, 18 and 31(2) *post* and notes thereunder.

Person omitting to claim.

2. A person who has really an interest in the land or in the compensation for its acquisition, may not have filed any claim, but he does not for that reason cease to be a person interested. This very often happens in the case of subordinate tenants in rural areas, and in case of small occupiers of rooms in a building or hut; also in case of co-sharers, beneficiaries and so forth. The Collector cannot ignore them, if they are otherwise justly entitled to a compensation. See notes under section 9 regarding Collector's enquiry for notice.

Claim includes claims to compensation other than the market value of land.

3. The expression used is "*interest* in the *compensation*", i. e. not merely in the market-value of the 'land'. This includes persons having an interest in the various kinds of damages in clauses secondly to sixthly in section 23(1) *post.*

4. As for persons interested in the market-value of the land, see various interests discussed in paras 1 to 5 ante regarding land.

Some persons who must be treated as interested.

5. The following are some of the persons who must be treated as persons interested :—

Trustees and beneficiaries and their assignees [1] :

Reversioners [2] : a presumptive Sebait [3].

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[1] *K. S. Banerji* vs. *Jatindra Nath Paul,* 108 I. C. 2.8, 1928 A. I. R. Cal. 475.

[2] *Gangi* vs. *Santu,* 116 I. C. 885, A. I. R. 1929 Lah. 786 : *Chettiamal* vs. *Collector of Coimbatore,* 105 I. C. 219, 1927 A.I.R. Mad. 867 : *Gopaya* vs. *Dy. Collector of Tenali,* 45 Mad. 421, 42 M.L.J. 298.

[3] *Nanda Lal Mullick* vs. *Kumar Arun Chandra Sinha and ors.* (1935), 41 C.W.N. 464.

A mortgagee, even though mortgage created after the declaration [4] :

An ijaradar, a raiyat or even an under-raiyat :

A lessee even when holding over, if by the terms of his lease he is entitled to the structures [5] :

An intending purchaser with a valid bonafide agreement [6] :

A tenant-at-will—if his interest has a market-value, as often happens [7] :

An attaching creditor [8] :

A person interested in an easement affecting the land [9] :

Illustrations of persons not validly interested in any compensation.

6. The following are some of the persons who are not entitled to any compensation in land acquisition :—

Work-people such as ploughman, quarry-man etc. [10] :

Holder of a money decree or a rent-decree where rent is not a charge on the land. But when he has obtained an attachment he is. [8]

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[4] *Jotoni Chowdhurani* vs. *Amor Krishna Saha* (1904), 13 C.W.N. 850, 6 C.L.J. 745, 1 I.C. 164, but not when after possession has been taken, *Amar* vs. *Ram Sundar* (1908), 13 C.W.N. 857. See also *Gajendra Sahu* vs *Secretary of State*, 8 C.L.J. 39.

[5] *Jagat Mohini* vs. *Dwarka Nath*, 8 Cal. 852 : *Dunia Lal* vs. *Gopi Nath*, 22 Cal. 820 : *Jagadiswar* vs. *Collector of Goalpara*, 39 C.L.J. 54.

[6] *Galstaun* vs. *Secy. of State*, 10 C.W.N. 195. The question of what he is entitled to is distinct. See also *Nobin Chandra Sah Pramanik* vs. *Krishnabaroni Dasi* (1911), 15 C.W.N. 420.

[7] *Secy. of State* vs. *Belchambers*, 10 C.W.N. 289, 33 Cal. 396, 3 C.L.J. 169 : *Girish Chandra* vs. *Secy. of State* (1919), 24 C.W.N. 184 : *Sadhu Charan* vs. *Secy. of State*, 36 C.L.J. 63.

[8] *Hashim Ibrahim* vs. *Secy. of State*, 31 C. W. N. 384, 37 Bom. 76 : *Sivapratapa* vs. *A. E. L. Mission*, A.I.R. 1926 Mad. 307. 49 Mad. 38, 9 I.C. 496 : *Golap Khan* vs. *Bhola Nath Merwick* (1910), 12 C.L.J. 545 : *Dwarika Nath Sen* vs. *Kishori Lal Gosain*, 11 C.L.J. 423.

[9] This extends to public right of way, see notes under section 16 ; and also customary rights. *Managing Committee, George High School* vs. *Abdul Karim Khan*, A.I.R. 1935 All. 895, 157 I.C. 111.

[10] *Secy. of State* vs. *Shanmugaraya Mudaliar*, 16 Mad. 369, 20 I.A. 80.

7. The Government in its capacity *as the acquiring authority*, is not a 'person interested' within the meaning of the Act. But can the Government be a 'person interested' in respect of lands owned [11] or held by it at the time of acquisition ? The question does not arise when the Government owns and is in *undisputed* possession of the *entire* interest in the land : for, there would be no occasion for proceedings under this Act when the land is required for the purpose of a Department of Government ; and when it is required for a local authority or company f necessary arrangements would be made between the Government and such authority or company either under the Crown Grants Act XV of 1895, or otherwise. The question, therefore, arises when the Government own or hold only a partial interest (e. g. as landlord and there is a tenant or lessee, or as a tenant under a private landlord and so forth), or when the Government's claim (whether for entire or partial interest) is disputed. The Allahabad High Court held in 1885 that it is a contradiction in terms to speak of Government seeking acquisition of land which it asserts belongs to it [12], thus ruling out cases where there was a dispute by a private party against the Government's claim of an interest in the land. In a later case [13] (1897) the same High Court held that as the Crown was not expressly mentioned [14] in the definition of "persons interested" Government could not be brought in as

Can Government be a person interested in land owned or held by it ?

Earlier decisions conflicting.

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[11] "Legally the Local Govt. own no land : the Crown is the owner of all State lands and property, and these are vested in the Govt. of India in trust for the country"—per Chandravarkar J. (referring to section 87 of 21 & 22 Vic. C. 106) in *Government of Bombay* vs. *Eusuf Ali Salebhoy* (1909), 34 Bom. 618. See also section 172 of the Government of India Act, 1935.

[12] *Imdad Ali* vs. *Collector of Farrakkabad* (1885), 7 All. 817.

[13] *Crown Brewry* vs. *Collector of Dehra-dun* (1897), 19 All. 339.

[14] But see the City of Bombay Improvement Act IV of 1898, sec. 47 (1) (a) as well as the City of Bombay Improvement Trust Transfer Act XVI of 1925, sec. 68 (1), which specifically include "Crown" within the meaning of "persons interested" in sec. 3(b) of the Land Acquisition Act.

such a person in a land acquisition proceeding. This reasoning had reference to the principle of English law which is recognised in India that "statutes do not bind the Crown unless expressly or by clear implication" or prejudicially affect "any estate, right etc...in lands, hereditaments, subjects or right of any description belonging to the Crown" [15]. But here, it may be observed, there is no question of any right or interest of the Government being prejudicially affected. The Madras High Court [16] took a view different from that of the Allahabad High Court and did not find anything irregular in a land acquisition proceeding where the Government's claim to the land was disputed by a private party, holding that in such case the Collector (and the Reference Court) should determine whether he was as claimed by him or was entitled only to a limited interest as admitted by Government.

Later decision—Government can be a person interested.

8. The controversy may be said to have been set at rest by a fully reasoned decision of the Bombay High Court in 1909 [17] in which it has been held that whatever the prerogative of the Crown there was nothing to prevent the Government from waiving this prerogative, as by a declaration and order for acquisition under the Land Acquisition Act ; and further that such a course would be necessary and justified for the

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[15] *Gorton Local Board* vs. *Prison Commissioners* (1887) reported in 1904, 2 K. B. 164 (42 Digest 690, 1050) : *Cooper* vs. *Hawkins* (1904) 2 K. B. 164 (42 Digest 692, 1075) : *Chare* vs. *Hart* (1918) 18 L.R. (K.B.) 832 (42 Digest 690, 1054) : *Secy. of State* vs. *Mathurabhai,* 14 Bom. 213, in which the Advocate-General on behalf of Government contended that "the Crown is not included in the Act unless there be words to that effect", and Sergeant C. J., accepting the view observed that "this rule of construction of Acts as regards the Crown relied on by the Advocate-General would appear to be equally applicable here as in England." See also *Ganpat Putaya* vs. *Collector of Kanara* (1875), 1 Bom. 7, at p. 9.

[16] *Dy. Collector, Calicut* vs. *Ayyavu Pillai,* 9 I.C. 341, 9 M.L.T. 272.

[17] *Govt. of Bombay* vs. *Eusuf Ali Salebhai* (1909), 34 Bom. 618 reversing the decision in re. *Eusuf Ali Salebhai* (1908) 10 Bom. L.R. 994.

security of Government revenue[18], when the land is required for a "company or other body from whose pockets the money is ultimately to come." It was further held in this case that although from the definition of "land" and the decisions of Courts on it, the award must comprise *all interests* in the land, yet in the special circumstance of Government having a partial interest, there was no insurmountable objection to adapting the procedure on the footing that the outstanding interests which were the only things to be acquired, were the only things to be paid for. Whether the procedure could be so adapted or not, it followed that Government would have to be treated as a "person interested", be it for the adjudication of the disputed claim or for apportionment : and so the value of the interest claimed by Government cannot altogether be omitted in all cases. Accordingly the Calcutta High Court has held that in a case in which the claim of Government was disputed, the omission to include Government as a person interested and the value of interest claimed by Government, was wrong, and the award was remanded for rectification[19]. In a later case the Allahabad High Court has also held that when a dispute arises between the Government and a claimant on a question of title, it is

[18] What probably was meant was—the value of the interest of Govt. in the land. Certain local Acts lay down that on payment of the cost of acquisition (viz. the compensation as awarded) the land shall forthwith vest in the local authority or body without any liability to pay any further costs : See the Calcutta Improvement Act of 1911, Sch. I, Clause 5 (adding a section 17A to the Land Acquisition Act), clause 6 of the Schedule to the United Provinces Town Imp. Act of 1919, clause 5 of the Schedule to the Burma (City of Rangoon Improvement) Act V of 1920 : also similar provision in sec. 476 of the Calcutta Municipal Act of 1923, sec. 98 (3) of the Bengal Municipal Act of 1898, sec. 91 (1) of the City of Bombay Municipal Act of 1888, sec. 67 of the Madras District Municipalities Act of 1920, sec. 58 of the Punjab Municipal Act of 1911. Unless Government was treated as a person interested and a value for its interest included in the award, Govt. may chance to lose the value.

[19] *Bejoy Kumar Addy* vs. *Secy. of State* (1916), 25 C.L.J. 476, 39 I. C. 889.

open to the Collector to refer the matter to the Court [20]; in other words, the Government would have to be treated as a "person interested."

When a local authority or company is a person interested.

9. A local authority or company on whose requisition Government may be acquiring any land, is not, as such, a "person interested" [21]; but such a body may have at the time of the acquisition an interest in the land as owner or otherwise. In such case the company or the local authority would be as a "person interested" entitled to such portion of the fee-simple value of the land as is equivalent to its interest, and there is nothing to limit the scope of the Act so as to exclude its application on this footing[22].

Clause (c)—Collector.

Position of the Collector—an agent of Govt. or arbitrator

Whether the land is required by a Department of the Government or by a local authority or company the acquisition under the Act has to be effected by the Local Government: and the Collector acts as an officer or agent [1] of Government. He is a Revenue Officer guided by the executive instructions of the Revenue Department, subject to the provisions in the Act relating to the duties of the Collector and his procedure.

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[20] *Makan Lal* vs. *Secy. of State*, A.I.R. 1934 All. 260 (F.B.), 148 I.C. 617. Compare the English Crown Lands Act of 1929 (10 Geo. 4 C. 50) according to which disputed claims of the Crown and real property are dealt with by the Special Commissioners. See also, *Sujan Singh* vs. *Secy. of State*, A.I.R. 1936 Pesh. 217.

[21] Hence the proviso to section 50 (2) post.

[22] *Babujan* vs. *Secy. of State*, 4 C.L.J. 256.

[1] *Ezra* vs. *Secy. of State* (1902), 30 Cal. 36, affirmed in 32 Cal. 605 (P.C.). *Bhajani Lal* vs. *Secy. of State*, 54 All. 1085, A.I.R. 1932 All. 568. The Collector's position is analogous to that of an official "arbitrator" under the English Acquisition of Land Act of 1919 : for, before him while the party will claim a high value, the requiring body (whether a Department of Government or a local authority or company) will be prone to under-value, and he has to determine the fair value as a trusted arbitrator or agent of Government.

Section 14 *post*, authorises him to enforce the attendance of witnesses and production of documents according to the Civil Procedure Code; but his proceedings are not judicial and he cannot administer oath[2]. There was a difference of opinion amongst the several High Courts on the question whether the Collector's action in the matter of references under section 18 (or 30) *post*, was subject to the revisional jurisdiction of the High Court. But since the recent decisions [3] of the Calcutta High Court there is now practical unanimity that even though the Collector be considered as a Court at this stage of his proceedings, he is not a Court under the jurisdiction of the High Court, at any rate not where the party has other remedy, e.g. where section 45 of the Specific Relief Act applies.

2. As a corollary to this position of the Collector, (viz. agent of the Government) his award as regards valuation is binding on Government, and hence the provision in section 25 (1) *post* that the amount of his award cannot be reduced by the Court.

3. The Collector is not an officer or agent of the local authority or company for whose purpose the land is acquired: but the position is similar, and the local authority or company cannot question in the Court the amount of the award made by the Collector, *vide* section 25 (1) *post*, and proviso to section 50 (2) *post*.

Where local authorities may function as Collector

4. Certain local authorities have statutory power to acquire land (see sec. 472 of the Calcutta Municipal Act, 1923), but they cannot proceed under the Land Acquisition Act unless appointed Collector by the Government. But see *Secy. of State* vs. *Belchambers*, 33 Cal. 401 in which it is observed :—"It is open to the Chairman of the Corporation to perform the duties of a Collector, but it is not obligatory on him to do so."

[2] *Durgadas Rakhit* vs. *Q.E.*, 27 Cal. 820. Though a person cannot be prosecuted under section 193 I.P.C., there seems no bar to prosecution under section 182 for false information as to facts.

[3] See notes under section 18 *post*.

For the requiring body itself to perform the function of "Collector" militates against the fundamental principle of compulsory expropriation of land. When therefore the Corporation takes land itself, it usually does it as a private arrangement and by a regular conveyance. Even in acquisition for Government, a distinction is made between the requiring department (called Administrative Department) and the acquiring department (viz. the Revenue Department)[4].

Clause (d)—Court.

Meaning of Principal Court of Original Jurisdiction.

Principal Civil Court of Original Jurisdiction is the Court of the District Judge, and does not include the original side of the High Court, *vide* section 3 (15) of the General Clauses Act X of 1897. An Additional District Judge is competent when a case is transferred to him by the District Judge [1]. In the Punjab, the Divisional Court has been declared to be the principal Court of original jurisdiction [2].

Officers specially appointed.

2. *Special Judicial Officer appointed by the Local Government.*—The intention of such special appointment is to meet cases of Provinces which have no Courts of separate Civil Jurisdiction and cases in which pressure of business requires such special appointment (Report of the Select Committee, 2nd February 1893). An officer so specially appointed is usually called the Special Land Acquisition Judge.

3. *Special Courts by Special Acts* : The Tribunal constituted under section 70 of the Calcutta Improvement Act V of

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[4] See "note" to para 1 of the Bengal Land Acquisition Manual and paragraphs 12 to 19 A.

[1] *Jogesh Chandra Sanyal* vs. *Rasiklal Saha*, 50 I.C. 690. But see Bengal, Agra and Assam Civil Courts Act XII of 1887 which does not provide for transfer to a Court Subordinate, nor the Bombay Civil Court's Act XIV of 1869 or the Madras Civil Court's Act III of 1873.

[2] Sec. 28 (b) of Act XVIII of 1884.

1911 is "Court" within the meaning of this section for the purpose of references in acquisition made for the Improvement Trust. So also for Bombay—the "Tribunal of Appeal" under section 48 of the City of Bombay Improvement Act IV of 1898, and for the United Provinces—the "Tribunal" constituted under section 57 of the U. P. Town Improvement Act VIII of 1919, are Courts.

Tribunals under special Acts.

4. The jurisdiction of the "Court" as defined in this Act, including Tribunals referred to in para 3 above, arises only from "references" made under sections 18, 30, 35 (3) or 49 (1) of the Act; and this jurisdiction has thus been held to be limited to the adjudication of matters which are necessary to adjudicate for the purpose of a final decision on those questions only, which come within the reference, and does not extend to matters not comprehended in this Act. See notes under section 21 *post.* The jurisdiction is, however, exclusive and cannot be exercised concurrently or otherwise by the ordinary Civil Courts : for, where the legislature has created an obligation to be enforced in a specific manner, as a general rule, performance cannot be enforced in any other manner [3].

Function and jurisdiction of the Court.

5. Besides jurisdiction arising from a "reference" made by the Collector, the Court has also jurisdiction to deal with certain deposits of compensation money without any "reference" where the party does not consent to receive it (though there is no dispute) or where he has no power to alienate, *vide* sec : 31 (2) post.

6. The Civil Procedure Code applies to the Reference Court (vide section 53 post). The Court's adjudication on "valuation", also called "award" (sec. 26) is a decree, and (apart from the general rule that where the remedy by a "reference" under the Act lies, no other action is permissible) operates, subject

Procedure of the Court & effects of its adjudication.

[3] *Saibesh Chandra Sarkar* vs. *Sir Bejoy Chand Mchatab*, 65 I.C. 711, 26 C.W.N. 506, A.I.R. 1922 Cal. 4.

to appeal, *as res-judicata*. In a trial before the Court of an "apportionment" dispute, the ordinary proceedings of a Civil suit are assimilated, and the adjudication is a decree and operates similarly as *res-judicata*. See notes under sections 21, 26, 29 and 53 *post*, and as for appeals see section 54 and notes thereunder.

Clause (e)—Company

Registered under the Indian Companies Act, 1888 : The amended and consolidated Act now is the Indian Companies Act VII of 1913. As for Companies authorised to register, see section 253 of that Act.

The English Companies Acts 1862 to 1890 : These have been re-placed by the Companies (Consolidation) Act, 1908 (8 Edw. VII c. 69).

The Societies Registration Act, 1860, is Act XXI of 1860. This Act relates, as stated in its preamble, to "societies established for the promotion of literature, science, or the fine arts, or for diffusion of useful knowledge, the diffusion of political education or for charitable purposes".

The Co-operative Societies Act, II of 1912 : The term "co-operative society" is not defined in that Act, but the Societies which may be registered under it and the conditions of registration are specified in secs. 4 and 6. In the Preamble the scope of the Act is stated as—"to facilitate the formation of co operative societies for the promotion of thrift and self-help among agriculturists, artisans and persons of limited means". The previous Co-operative Societies Act of 1904 applied only to the societies for the purpose of co-operative credit. The Act of 1912 gives a wider scope.

Societies included by the amendment of 1919.

The words within brackets, relating to societies under the Societies Registration Act and the Co-operative Societies Act were inserted by the Land Acquisition (Amendment) Act XVII of 1919. The Indian Companies Act does not apply to such societies or to provident societies, trade unions, ordinary partnership or limited partnership: see Palmer's Company Law.

The rest of the definition is the same as in the Act as passed in 1894 : and a question may be whether the changes made in the later Indian and English Companies Acts would govern the Land Acquisition Act. One principle of law is that when the provisions of an Act are inducted for application in another Act, any subsequent amendment of the former Act is not necessarily applicable for the purposes of the other Act [1]. But the Acts of 1913 and 1908 were *consolidating* Acts [2]. The same question arises with the amendment of the Societies Registration Act by Act XXII of 1927. This amendment was not however a consolidating Act.

Applicability of the later Companies Act.

The word "means" in the clause, indicates that the definition of "Company" is a complete definition, [3] and a body desiring to apply the Land Acquisition Act must come within one or other of the categories in the definition. As for further conditions necessary, see notes under clause (f) and sections 6 and 38 to 44 *post*. See also the meaning of "Company" in the Land Acquisition (Mines) Act XVIII of 1885, sec. 16 (b). The addition for "Societies" made by the Land Acquisition (Amendment) Act of 1919 referred to above, does not apply to that Act.

Definition exhaustive.

Definition in the L. A. Mines Act.

There are certain bodies for which specific provision is made in the Acts relating to them, for the application of the Land Acquisition Act, e.g. Railways, Electric Corporations, Tramways Companies etc.

Clause (f)—Public purpose

"Public purpose" is the most essential requirement to justify the application of the Land Acquisition Act, and the Local

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[1] *Secy. of State* vs. *Hindusthan Co-operative Insurance Society Ltd.*, 59 Cal. 55, 58 I.A. 259.

[2] See *Bank of England* vs. *Vagliano* (1891), A.C. 144, and the observations of Lord Herschell in that case on the construction of a consolidating Act.

[3] See also the word "mean" in clauses (c) and (d) and compare the word "includes" in clauses (a) and (f).

Government has to make a definite declaration, after due inquiry, that the land is required for such purpose (see secs. 5A and 6 post). This Act, in one sense, means forcible expropriation of individuals though on payment of compensation for all losses suffered. The underlying principle is that "public purpose" is paramount, and private interests or sentiments must submit to it. There is an apparent distinction[1] between an acquisition for a public purpose and an acquisition for a Company (see Preamble *ante*), but one of the conditions on which the Act can be applied for a Company is (except where the purpose is to provide dwelling houses for workmen) that the work for which the land is required is such as is "likely to prove useful to the public" (see sec. 40 (1) (b) *post*), and "the terms and conditions on which the public shall be entitled to use the work" are to be expressly stipulated in the agreement between the Company and the Government (sec. 41 (5) *post*). In effect, the position comes very near to the same as "public purpose".

The term "public purpose" is not defined. Clause (f) only states that it includes the provision of village-sites in certain circumstances. Section 40(1) (a) *post*, inserted by the amending Act XVI of 1933, includes dwelling houses for workmen meaning thereby that in such circumstances such provision should be considered as a matter of public concern and as such a "public purpose." In the case of local authorities such as a municipality, the purpose must be such as is covered by the purposes for which that authority is constituted by the enactment relating to it. Certain purposes are specifically mentioned as "public purposes" in special Acts e.g. protected monuments

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[1] Compare the plan in the English Law. The Lands Clauses Consolidation Act, 1845 is meant generally for acquisitions for "undertaking or works of a public nature", which includes acquisitions for companies; while the Acquisition of Land Act, 1919 (9 & 10 Geo. 5 ch. 7) is meant for acquisitions for "public purposes" by which are meant acquisitions "by any Govt. Department or any local or public authority".

in the Protected Monuments Act VII of 1904 [2]. But there is still a wide field for what are public purposes : and it has been held that the Local Government is the sole authority to decide what is or what is not a public purpose [3], and the decision of the Government in this respect cannot be questioned in the Civil Court. But where the acquisition is for a local authority the Civil Court has jurisdiction to entertain a question whether the purpose is one within the statutory scope and function of the local authority [4].

It follows that diversion of purpose from the ostensible purpose for which land is acquired is not permissible [5]. In the case of Companies, there is thus usually a specific condition to the effect in the agreement between the Company and the Government under sec. 41 *post*, and in the Indenture which is executed when the land is handed over to the former. Under the English Law also the promoters of an undertaking are required to sell the land if it is not required for the purpose for which it was acquired (sec. 127 of the Lands Clauses Consolidation Act, 1845). They have in this respect the rights of ordinary vendors in disposing of the lands with or without restrictive covenants [6] ; but unless the land be situate within a town or is built upon or used for building purposes, they must offer it to the original owners who have a right of pre-emption [7].

[2] There is also mention in various special and local Acts of the purposes for which the Land Acquisition Act may be applied as if these were "public purposes" for the proper functioning of those Acts.

[3] *Ezra* vs. *Secy. of State*, 30 Cal 36, 7 C. W. N. 249.

[4] *Shastri Ramchandra* vs. *The Ahmedabad Municipality* (1900), 24 Bom. 600.

[5] In the case of a local authority if the other purpose is within the scope of its statutory function the diversion is justifiable. *Luchmeswar Singh* vs. *Chairman, Darbhanga Municipality*, 18 Cal. 99, 17 I. A. 90, where certain land acquired by the municipality for a public *ghat* was subsequently used for a market.

[6] Re. *Higgins* and *Hitchman* (1882), 21 Ch. D. 95 (11 Digest 287, 2144).

[7] Section 128, Lands Clauses Consolidation Act; 1845. *London and South Western Railway* vs. *Gomn* (1882) 20 Ch. D. 562 C.A., per Jessel M.R. at page 584.

This covers to a certain extent cases of what are called surplus or superfluous lands which though not ultimately required for running the public purpose, are still necessary in the start for the execution of that purpose: for example where a Railway requires land to take earth from, for its embankment or to provide temporary quarters for the staff. When no longer required, such land would be sold with preference given to the original owners, but at the time of the acquisition, its acquisition was nonetheless a public purpose, viz. the construction of the Railway.

Slightly different is, however, the position of a Town Improvement Trust when it demands a betterment fee from the owner of land not required either for the purpose of its work (e. g. construction of a road) or for clearing an insanitary site, and then when the owner does not or is not able to pay the fee, acquire it under the Land Acquisition Act. The authority for this is the specific provision for it in the Act relating to the Trust, and the obvious justification for it is that the fee is only a portion of the unearned increment to the value of the property at the expense of the public body, viz. the Trust. There are similar provisions in certain Municipal Acts as well.

Clause (g)—Persons entitled to act.

Trustees.

"Trustee"—includes an executor or administrator of a deceased person: see section 2 of the Indian "Trustees Act XXVII of 1866, which defines "Trust" and "Trustee" thus:—

"Trust shall not mean duties incident to an estate conveyed by way of mortgage; but, with this exception, the word 'Trust' and 'Trustee' shall extend to and include implied and constructive trusts and shall extend to and include cases where the trustee has some beneficial estate or interest in the subject of the trust and shall extend to and include the duties incident to the office of executor or administrator of a deceased person". It includes shebaits[1] of dedicated property.

[1] *Kamini Debi* vs. *Pramatha Nath Mukherji*, 39 Cal. 33, 18 C.L.J. 597, 10 I.C. 491: *Ramprasanna Nandy* vs. *Secy. of State*, 19 C.W.N. 652, 40 Cal. 895, 22 I.C. 272.

It includes also Court of Wards and also guardians or receivers appointed by a Court according to the terms of such appointment : also managers of lunatics and idiots.

Guardian.

"Guardian"—means a person having the care of the person of a minor or of his property ; or both his person and property : see section 4 (2) of the Guardians and Wards Act VIII of 1890. A *de facto* guardian is a guardian : 52 I. C. 541.

Minor.

"Minor"—See section 3 of the Indian Majority Act IX of 1875 which fixes 18 years as the age of majority of persons domiciled in British India, except in cases where a guardian has been appointed by the Court or the minor is under the Court of Wards, in which case the age is 21 years. In computing the age, the day on which the person was born is to be included as a whole day, and majority would be deemed to be attained on the anniversary of that of the 18th or 21st year as the case may be.

Lunatics and Idiots—See Lunacy Act IV of 1912.

Proviso (*i*)—bars persons with adverse interest from being "entitled to act". An extreme view of this position was taken in the case of *Lachmiswar Singh* Vs. *Chairman, Darbhanga Municipality*, 18 Cal. 99 (P. C.), in which the Collector acquiring the minor's land, had also the estate of the minor under his control. It appeared in the case that the Collector did not make sufficient enquiry as to the value of the land and made only a nominal award of one rupee. *Held*—that the acquisition was not binding on the minor and that on attaining majority he could recover the land with mesne profits.

Proviso (*iii*)—The provisions of chapter XXXI of the old Code of Civil Procedure are now contained in Order 32, Rules 1 to 16 of the Civil Procedure Code, Act V of 1908, and relates to suits by or against minors and persons of unsound mind.

Proviso (*iv*)—makes it clear that the expression "Persons entitled to act" must not be confused with "persons competent to alienate" and thus entitled to receive payment of the compensation money, vide section 31 (2), post and notes there-under.

PART II.

ACQUISITION.

Part II of the Act deals with the several stages of the actual acquisition proceedings up to taking of possession. It is divided into five sub-parts. viz.—

"Preliminary investigation" (secs. 4 & 5) as by a reconnaissance survey, for ascertaining what lands would be suitable and may be required for acquisition, including a preliminary announcement of the proposal.

"Objections" (sec. 5A) i.e. objections, if any, to the necessity or otherwise of the proposed acquisition itself.

"Declaration (by Government) of the intended acquisition" (secs. 6 to 10), including order to proceed with the acquisition, and notices by the Collector to persons interested inviting claims to compensation.

"Enquiry into measurements, value and claims, and award by the Collector" (secs. 11 to 15).

"Taking possession" (secs. 16 and 17).

The procedure in all these stages is entirely executive and not judicial, although the Collector has, for the purpose of his enquiries and award, the power to enforce the attendance of witnesses and production of documents according to the provisions in the Civil Procedure Code (sec. 14 *post.*)

Preliminary Investigation.

Publication of preliminary notification, and powers of officers thereupon.

4. (*1*) Whenever it appears to the Local Government that land in any locality [is needed or]* is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette, and the Collector shall cause public notice of the substance of such

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* These words were added by s. 2 of the Land Acquisition (Amendment) Act, XXXVIII of 1923.

notification to be given at convenient places in the said locality,

(2) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen,—

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

This section has two-fold objects, viz. (i) a notification (by Government) and public notice (by the Collector) announcing that land is needed or is likely to be needed for acquisition,

in any locality, and (ii) legal authority to the departmental officers or the officers of a local authority or company for whose purpose the land is needed, to survey and do other acts by entering upon lands as may be necessary for the preliminary investigation to ascertain what lands are suitable and may have to be taken.

Objects of the section—announcement of intention, and authority for reconnaissance survey.

2. The latter may not always be, and ordinarily is not, necessary[1]. The words "that land in any locality" is likely to be needed refer to cases in which this latter procedure is necessary, that is to say when it is not possible to state what lands exactly are needed without such a preliminary investigation. Certain local Acts provide for this authority for the officers of the requiring bodies, e.g. sec. 168 of the Calcutta Improvement Act of 1911, sec. 47(2) of the Bombay (City) Improvement Act of 1898.

Reconnaissance survey not always necessary—

3. A notification and a public notice under section 4(1) are necessary even when such a preliminary investigation is not required for determining what land exactly is needed. This is now made clear by the words "is needed or" which were inserted by the Land Acquisition (Amendment) Act XXXVIII of 1923. The Collector also needs such a notification before he can induct the operation of sec. 46[2] *post*; for, he has to enter upon the land for preparing his estimate of probable cost at this stage and there may be obstruction.

but notification and public notice always necessary.

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[1] It is ordinarily necessary where, for instance, a Railway Company requires such a preliminary investigation to fix the exact alignment of a proposed railway, or a Department of Government or a local authority proposes to fix the site for drainage, canal or embankment. This is usually called reconnaissance survey. See *Rameswar Singh* vs. *Secy. of State* (1907), 34 Cal. 470. Similar authority is provided for in section 84 of the English Lands Clauses Consolidation Act of 1845.

[2] *Nur Mohamed* vs. *Secy. of State*, A.I.R. 1926 Bom. 369, 28 Bom. L.R. 582, 96 I.C. 329.

4. Besides serving as a preliminary public announcement of the purposes, the notification and the public notice under sec. 4(1) has another object, viz.—to invite objections for the purpose of sec. 5A *post* which was added by the amending Act XXXVIII of 1923. It is necessary even in emergent cases, where the provisions of sec. 5A do not apply, vide sub-section (4) of sec. 17 *post*, which was also added by the same amending Act of 1923.

Necessary for objections under Section 5A: and also otherwise.

5. The date of the notification under sec. 4(1) is important, as it fixes the material time for determining the market-value of the land: see section 23(1) first, *post*, and notes thereunder.

Date of notification important for market-value.

6. *Public notice*: This is to be distinguished from a notice on individuals[3] for which only sec. 45 *post* may be applied. The "public notice" has to be given at convenient places in the locality and this is usually done by affixing a copy at a conspicuous place on the land to be acquired, or at a conspicuous place in the village where the land is situated or by beat of drum in such village, or such other manner as is laid down by the instructions of the Local Government, or by two or more of these methods.

Public notice—how served.

7. *Generally or specially authorised*: These words in sub-section (2) cover cases of officers of a company for whose purpose the land may be required, *vide* sec. 38 *post*. In such cases the words "for such purpose" in the sub-section concerned are to be taken as meaning "for the purposes of the company", vide the same section.

General and special authorisation.

8. *Set out the boundaries*: This would be done either by pegging or by digging trenches along the boundary line or by any other convenient method.

Setting out of boundaries.

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[3] At this stage it is not possible to know, at any rate with any degree of completeness, the names of individuals who may be interested in the land. The executive instructions in Bengal are that this notice should be served also on individual persons interested in the land so far as may be possible at this stage.

Previous notice before entry for survey etc.

9. The *Proviso* requires a previous notice of at least 7 days, unless the occupier otherwise consents, in cases of entry into any building or enclosed court or garden attached to a dwelling-house. In other cases the notification and public notice announcing the authority is sufficient. Under the English law a previous notice of "not less than 3 and not more than 14 days" has to be given in all cases, except of course where the owners consent otherwise: sec. 84 of the Lands Clauses Consolidation Act, 1845.

Cancellation of notification.

10. A notification under section 4 (1) is not a declaration as meant by section 6 *post*. It need not necessarily be followed by a declaration under the latter section: for, the project may, after this stage, be abandoned, or Government may, in their decision on objections under section 5A, refuse to proceed further. In such cases the notification is simply cancelled (compare "withdrawal" under section 48 *post*).

Damages.

11. As for damages sustained on account of action taken under sub-section (2), see section 5 *post*.

Payment for damage.

5. The officers so authorized shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue officer of the district, and such decision shall be final.

The words "the officer" shall be construed as "the officer of the Company" where land is acquired for a Company, vide sec. 38 (2) *post*. Under sec. 168 (2) of the Calcutta Improvement Act, 1911, the Chairman is to determine and tender payment for all necessary damages; and in case of dispute as

to the suffiiciency of the amount, he has to refer to the Board of Trustees whose decision is final.

Determination of damage by Collector—final.

2. Section 5 has reference to the entry under the authority and for the purposes of sec. 4(2), (i. e. for a preliminary or reconnaissance survey) by an officer authorised in that behalf. Such officer would be an officer of the requiring body, viz. the company, local authority or the Department of Government seeking acquisition. The intention of the section obviously is that the amount of compensation for necessary damages should be settled at the time of entry by such officer, where possible, and he should arrange for the payment also [1]. If he fails to settle, he should refer to the Collector [2] or the chief revenue officer of the district, and the decision of the latter shall be final. There can be no further reference to the Court, and the decision being "final", no civil suit lies either.

Compare damages in sudden dispossession or temporary occupation.

3. Damages caused at this stage are to be distinguished from somewhat similar damages caused by sudden dispossession under the emergency provisions of sec. 17 *post*, or damages for temporary occupation of land under sec. 35 *post*. In the former case the Collector, unless the amount is settled and accepted forthwith, may include it in his eventual award which would then follow the usual course of reference under section 18 etc.,

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[1] The procedure is also similar under the English Law: Sec. 84 of the Lands Clauses Consolidation Act, 1845 provides that—"it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof." Where there is no agreement with the party as to the amount of compensation, the promoters are required to deposit the amount claimed in the Bank, and the proper amount to be paid would be determined by a surveyor appointed by two justices, vide section 85.

[2] It is doubtful whether "Collector" here has the same meaning as given in the definition, sec. 3 (c) *ante*. The words "or other Chief Revenue Officer of the District" rather goes to indicate differently.

vide section 17(3) post. In the latter case also the usual course of reference is open, vide sections 35 (3) and 37 *post*.

—and in cases of slips or accidents in railways.

4. Compare also section 10 of the Indian Railways Act IX of 1890, where under similar circumstances of damage on temporary occupation in case of "slip or other accident" (sec. 9), the Railway officers have to settle and pay for the damages[2] caused: only in case of dispute they will apply to the Collector to determine the amount and make payment. The Collector's order in such case is however an award, and sections 11 to 15 of the Land Acquisition Act, as well as sections 18 to 34 and 51 to 54 for reference to Court, apply.

Objections.

Hearing of objections.

5A. (*1*) Any person interested in any land which has been notified under section 4, sub-section (*1*), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(*2*) Every objection under sub-section (*1*) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary,

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[2] This section 10 applies only to damages which are the results of the exercise of the powers under sections 7, 8 and 9 of the Act, and which can be foreseen: 2 Bom. L.R. 357. If the Collector refuses to adjudicate upon a claim put forward, a civil suit for compensation is not barred: *Rameswar Singh vs. Secy. of State* (1937), 34 Cal. 470, 11 C.W.N. 356.

submit the case for the decision of the Local Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the Local Government on the objections shall be final.

(*3*) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

Scope of Collector's enquiry.

This section was inserted by the Land Acquisition (Amendment) Act XXXVIII of 1923. It gives a statutory formality to the previously informal enquiry which the Collector had to make before submitting his proposal for any acquisition, to Government. The Collector had (and has) to certify that there was no valid objection to the acquisition. This section provides for the issue of a notice inviting objections from "persons interested" within thirty days, and then a formal hearing of such objections. It does not follow that the Collector is not to give his views even when there has been no such formal objection to the acquisition. The objections allowed under this section are only objections from "persons interested", and "persons interested" have a limited meaning under clause (3). There may be objections on public or other grounds, and these the Collector has to consider.

Period to allow for objections.

2. *Within 30 days after the issue of the notification* :—It is not clear whether this period of 30 days is to be calculated from the date of the "publication" of the notification in the Gazette or the date of "*causing public notice of the substance of the notification*" in the locality—as mentioned in section 4. The Bengal Government instruction is to take the latter date.

Public notice obligatory : to what extent notices on persons interested may issue :

3. It is not possible for the Collector to ascertain at this early stage the names of all persons interested in the land. The notice can therefore, be only a general, one for all concerned. The words in section 4 (1) are "public notice". The executive instruction of the Government of Bengal is, however, that notices should also be issued to all persons interested so far as can be ascertained at this stage.

Shall give the objector an opportunity :—This means that the objector should be informed of the date and place of hearing.

Together with the record of the proceedings :—The record itself with the objections in original has to be submitted to the Local Government. This emphasizes the importance of the enquiry and of the order that the case is a proper one for the application of the Land Acquisition Act, an order which is final[1] on the question.

The original record to be sent.

Where this section is not applicable.

4. This section is not applicable in the following cases :—

(i) Urgent cases of acquisition under section 17 *post* where the Local Government directs that the provisions of section 5A shall not apply, vide sub-section (4) of that section.

(ii) Temporary occupation of land under sections 35 to 37 *post* :

(iii) A requisition of additional land or part of a house or building, vide section 49 *post* :

(iv) Temporary occupation of land in cases of slips or accidents happening or apprehended in a railway : secs. 9 & 10 of the Indian Railways Act IX of 1890.

(v) When the acquisition is under a special or local Act passed prior to the amendment of 1923 (by which this section 5A was introduced), and in which there is special provision inducting the application of the Land Acquisition Act, i. e. the Land Acquisition Act in force at that time[2].

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[1] *Ezra vs. Secy. of State*, 30 Cal. 36, 7 C.W.N. 249.

[2] It is a question of interpretation of statutes. See *Secy. of State vs. Hindustan Co-operative Insurance Society*, 59 Cal. 55 (P.C.)

5. The question is not free from doubts where in an acquisition for a company, the alternative of an enquiry as provided for in section 40(1) is followed. It would seem to follow from the word "or" in the expression "under section 5A sub-section (2), *or* by an enquiry held as hereinafter provided", in section 40(1) that a proceeding under section 5A is not necessary when there is an enquiry under sec. 40(1); but the scope of section 40(1) is a limited one, more or less a matter to be explained by the requiring company as to whether the purpose is one which is covered by clauses (a) or (b) of that section. There is no provision for public notice inviting objections, if any, of persons interested as enjoined by sec. 5A: and the question may be whether a more proper interpretation would not be that an enquiry under section 40(1) may not be necessary when there is an enquiry under sec. 5A, but not the reverse. In any case it seems desirable that whatever the section under which the enquiry is made in the case of a company, that enquiry should cover matters contemplated by both sections 5A and 40(1).

Question doubtful where there is an enquiry under section 40(1)

6. The section is silent as to what are the grounds on which objections may be taken. The position in this respect is thus the same as enunciated in *Ezra's* case, that the Government is the sole arbiter and the decision of Government is final. Inconveniences to private individuals or their disinclination [3] to part with their property are not relevant—though these may be matters for the consideration of the requiring body and the Collector e. g. whether another site to which there is less objection, is not equally suitable. The executive instructions of the Government of Bengal are as below :—

Grounds of Objection.

"The officer who selects the land on behalf of the requiring department is bound to see that the interests of Government, of the public and of private individuals are duly considered, and that sites and alignments are chosen so as to cause the

See section 24 secondly : *Ezra vs Secy. of State*, ibid.

minimum of expenditure. annoyance and loss compatible with the attainment of the object for which the land is required. In particular, he will avoid lands which contain any religious buildings, tomb or graveyard or lands to the acquisition of which there is likely to be religious objection." (Paragraph 12, Bengal Land Acquisition Manual).

Enquiry by Improvement Trusts,

7. In the case of Improvement Trusts, there are special provisions for enquiry and hearing of objections regarding the lands proposed for acquisition. See Chapter III of the Calcutta Improvement Act of 1911.

and by local authorities: effect of.

8. Local authorities, such as a District Board or Municipality, cause an enquiry by their officers as to the necessity and the propriety of and purpose for acquisition, and then there is a resolution by the Board or the Municipality. Such enquiry or resolution does not preclude the application of sec. 5A when the Land Acquisition Act is sought to be applied later. When the *bonafide* and propriety of such a resolution were challenged in the Civil Court at a stage when it had only been submitted to the Commissioner in the usual course, it has been held [4] that the jurisdiction of the Court was not barred by the reason that in the eventuality of a future development, there might be a remedy under sec. 5A.

Declaration of intended Acquisition.

Declaration that land is required for public purpose.

6. (*1*) Subject to the provisions of part VII of this Act [when the Local Government is satisfied, after considering the report, if any, made under section 5A, sub-section (*2*),] that any, particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature

[4] *District Board of Chittagong vs. Sasi Bhusan Pal and others*, A. I. R. 1936 Cal. 225, 40 C. W. N. 687, citing *Westminister Corporation vs. L. & N. W. Ry. Co.* (1905), A. C. 130.

of a Secretary to such Government or of some officer duly authorized to certify its orders :

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) The declaration shall be published in the Official Gazette and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the Local Government may acquire the land in manner hereinafter appearing.

Declaration under section 6 always necessary : exception.

A "declaration" by the Local Government under this section (to be published in the Official Gazette) is always necessary before any land can be acquired under the Act. The only exception is where additional land is acquired as part of a house manufactory or other building under section 49(2) *post*, vide sec. 49(3). Where such additional land is acquired in pursuance of an order of the Court [1] under the second *proviso* to sec. 49(1), a declaration is necessary, as sec. 49(3) which refers only to sec. 49(2), will not apply.

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[1] It is not clear whether proceeding would have to be started with a notification under section 4 for such additional land.

2. Temporary occupation of land under sections 35 to 37 *post* or temporary occupation in cases of slips or accidents happening or apprehended in a Railway (sections 9 & 10 of the Indian Railways Act IX of 1890) is really not acquisition in the full sense[2], and no declaration under sec. 6 is required. But an order of the Government is nevertheless necessary, *vide* the provisions in these sections.

No declaration needed in temporary occupation.

3. The requirements which must be fulfilled before Government will make a declaration under this section are :—

Requirements before declaration

(i) that there has been an enquiry and a report under sec. 5A *ante* or in the case of a company, under section 40 and 41 *post*, and Government is satisfied thereon that the land is needed for a public purpose, or in the case of a company for the purposes etc, specified in secs. 40 and 41 :

and (ii) that the compensation-money is to be paid by the company where the land is needed for the purposes of a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

4. *Subject to the provisions of Chapter VII*: This refers mainly to sec. 40 (1) which lays down that the Local Government may be satisfied—"either on the report of the Collector under section 5A, sub-sec. (2) or by an enquiry held" according to sec. 40 (1). As to whether these words mean that there need not be any proceeding or report under sec. 5A when there has been an enquiry under sec. 40 (1), see notes under sec. 5A *ante* and under sec. 40 (1) *post*.

5. *For a public purpose or for a company* :—For the meaning of "public purpose" see sec. 3 (f) *ante* and notes thereunder, and also paras 3 and 6 of the notes under the Preamble. As regards company, see the meaning in sec. 3 (e) *ante* : and besides this the conditions specified in sections 40 and 41 *post* must be

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[2] For instance section 16 does not apply and the land does not vest free from all incumbrances.

satisfied before Government would make a declaration under section 6 for the acquisition of land needed for a company.

6. *Is to be paid by a company* :—As the funds of the company would not be under the control of the Government, section 41 provides for a previous agreement stipulating the payment of all costs [3].

Public revenues —meaning of :

7. The expression "public revenues" is not defined. It apparently means the revenues of Government as opposed to the revenues of the "local authorities" or "companies". Where the cost is borne from "public revenues" the Land Acquisition Act becomes applicable by its own operation. There is however special mention of the Land Acquisition Act in the various local Acts relating to Canals, Drainage, Irrigation, Embankments and Forests. In the case of Railways where by the terms of agreement between the Secretary of State and the Company (vide sec. 43 *post*), the Government is bound to provide land, the fund from which the cost is met takes the character of "public revenues".

Local authority— meaning of.

8. "Local authority" as defined in the General Clauses Act X of 1897 means :—"A municipal committee, district board, body of port commissioners or other authority legally entitled to or entrusted by the Government with the control or management of a municipal or local fund". Under article 1 (ee) of the Schedule to the United Provinces Town Improvement Act (8 of 1919), the expression "local authority" in the Land Acquisition Act includes a Trust constituted under that Act. So also article 1 of the Schedule to the Calcutta Improvement Act, 1911. In these

Special local bodies—application of the Act to.

[3] Under section 16 of the English Lands Clauses Consolidation Act, 1845—"the whole of the capital (of the promoters) or estimated sum for defraying the expenses of the undertaking shall be subscribed under contract binding the parties thereto, their heirs, executors and administrators, for payment of the several sums by them respectively subscribed, before it shall be lawful to put in force any of the provisions of this or the special Act, or any Act incorporated therewith, in relation to the compulsory taking of land for the purposes of the undertaking:"

Acts as well as in the Bombay Improvement Act, the Land Acquisition Act of 1894 is made applicable subject to certain modifications as specified in the Schedules which are parts of those Acts.

"Port Trusts" come within the meaning of "local authority" but there is also special mention for the application of the Land Acquisition Act in the several local Port Acts viz. Calcutta (Act 3 of 1890, sec. 58), Bombay (Act 6 of 1879, sec. 27): Madras (Act 2 of 1905, sec. 33), Chittagong (Act 4 of 1887, sec. 14), Karachi (Act 2 of 1905, sec. 33), Rangoon (Act 4 of 1905, sec. 32), Aden (Act 5 of 1888, sec. 24).

Port Trusts

"Railways":—Unless by reason of any agreement with the Secretary of State Government is bound to provide land (sec. 43 *post*), a Railway Company would be a company only and not a local authority.

Railways.

"Tramways":—See section 7 (3) of Act II of 1886 which lays down that the local Government when providing for acquisition of land, *may* direct that the provisions of the Land Acquisition Act of 1894 shall apply "in the same manner and on the same conditions as it might be acquired for the purpose of the Tramway if a 'company' were the promoter". The procedure of sections 38 to 44 would therefore apply in such cases. The word used is "may": for, such direction may not be necessary when the cost is borne "wholly or partly out of the public revenues or some fund controlled or managed by a local authority".

Tramways.

"Telegraphs":—This comes within "public revenues" and the Land Acquisition Act applies by its own operation. But there are certain special provisions for compensation in section 16 of the Indian Telegraph Act (13 of 1885).

Telegraphs.

"Electricity":—When not financed by Government or a local authority, the promoters would come within the meaning of "company", and it is made clear in section 57(1) of the Indian Electricity Act (9 of 1910) that

Electricity.

the term "work" in sections 40 (1) (b) to 41 of the Land Acquisition Act "shall be deemed to include electrical energy supplied or to be supplied by means of the work to be constructed".

—partly public revenue or local fund.

The words "partly out of public revenues etc." in the proviso, justify acquisition of lands for privately managed institutions of public utility such as schools or hospitals when a portion of the cost is borne by a grant from Government or a local authority. The acquisition in such cases is treated (at any rate in Bengal) as made at the instance of the Government or the local authority as the case may be, and not as an acquisition at the instance of a "company", and the procedure of sections 38 to 44 is not followed.

The converse arises when there is a private contribution made to Government or a local authority for the execution of a work which is of such public utility that the application of the Act is otherwise justified, the balance of the cost being met either by the Government or the local authority. This fulfils the requirements of the section even when the private contribution does not merge into the "public revenues" but is separate, however small or even nominal the portion borne by Government[4]. In case of local authority (e. g. a Municipality) such private contribution usually merges in the fund of such body under the provision of the statutes constituting such fund ; and in any case the words "fund controlled or managed by a local authority" in the section, would seem to cover such cases.

9. *Sub-section* (2) : The essential particulars in a declaration are—(*a*) a sufficient description of the land to be acquired : (*b*) the purpose for which it is needed : (*c*) its approximate area : and (*d*) the place where the plan may be inspected. So long as these particulars are available from the declaration, the form

[4] *Senga Naicken vs. Secy. of State*, 50 Mad. 308, 99 I. C. 542, A. I. R. 1927 Mad. 245, in which the whole of the cost of acquiring land for a road was borne from private contributions and Govt. paid only one anna. *Contra* : *Ponnaia vs. Secy. of State*, A. I. R. 1926 Mad. 1099, 97 I. C. 471, which was dissented from in the above case.

in which it may have been framed is immaterial [5]. In a municipal area it is more intelligible to all concerned if the premises numbers are mentioned : so also where there has been a cadastral survey and record-of-rights if the plot-numbers and the serial numbers (khatian numbers) of the record are mentioned. The sub-section does not mention how the cost is to be met and it is not necessary that the declaration should on its face show that the cost is to be met out of the public revenues [6].

10. The words used in sub-section (3) are :—"The said declaration shall be *conclusive evidence* that the land is needed for a public purpose or for a company." This means that when the publication of the declaration has been proved, it shall also be regarded as proved that the land is needed for a public purpose or for a company as the case may be, and the Court shall not allow evidence for the purpose of disproving it, *vide* sec. 4 of the Indian Evidence Act. The decision of the Local Government is thus final and cannot be questioned in the Civil Court [7]. Nor is this provision in section 6(3) ultra vires of the Indian Legislature [8]. The institution of a suit for an injunction to restrain Government before declaration, does not alter the position when a declaration is made later on [9]. In a case for acquisition for a local authority the Civil Court has, however, jurisdiction to enter into the question whether the proposed acquisition is for a purpose sanctioned by the statutes relating to

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[5] *Ezra vs. Secy. of State*, 30 Cal. 36.

[6] *Rammurti vs. Special Dy. Collector*, 1926 M. W. N. 968, A. I. R. 1927 Mad. 114, 99 I. C 580.

[7] *Ezra vs. Secy. of State* (P. C.), 32 Cal. 605, 9 C. W. N. 454, A. I. R. 1921 Cal. 159 : *Balwant Ram Chandra Rao vs. Secy. of State*, 29 Bom. 480 : *Kasturi Pillai vs. Municipal Council, Erode*, 43 Mad. 280, 53 I. C. 646 : *Secy. of State vs. Akbar Ali*, 74 I. C. 8, 45 All. 443, A. I. R. 1923 All. 523.

[8] *Veera Raghavachariar vs. Secy. of State*, 86 I. C. 485, 49 Mad. 237, A. I. R. 1925 Mad. 837.

[9] *Secy. of State vs. Murugesam Pillai*, 124 I. C. 198, 1930 A. I. R. Mad. 248, following *Nuri Mian vs. Ambica Singh*, 44 Cal. 47, 20 C. W. N. 1099, 34 I. C. 869.

such local authority [10]. It has also been held in a Calcutta case that the validity of the steps which led up to the declaration, can be gone into by the Civil Court.[11]

A declaration under section 6 cannot be made for the acquisition only of a "partial interest" in land. This follows from the definition of "land" under section 3(e) *ante*, and from section 16 *post* which lays down that the effect of acquisition under the Act is that the land shall "vest absolutely in the Government, free from all encumbrances." There cannot, therefore, be any outstanding interest or encumbrance after acquisition [12]. The only exception is in the case of mines, when so directed under section 3 of the Land Acquisition (Mines) Act XVIII of 1885. As for Crown lands and cases where the Crown has a "partial interest" or an interest which is disputed, see para 4 of the notes under section 3 (a) and paras 7 and 8 of the notes under section 3(*b*) *ante*.

Miscellaneous.

Irregular entry liable to damages by separate suit.

11. Irregular entry upon land before declaration or before Collector's taking of possession, and causing damages to crops and trees are liable to separate suit for such damages [13]. The case presupposes that the matter is not covered by sec. 4 or 5. The principle is that all statutory provisions in respect

[10] *Shastri Ramchandra vs. Ahmedabad Municipality* (1900), 24 Bom. 600 at page 602 : *Municipal Corporation of Bombay vs. Ranchordas*, 90 I. C. 695, A. I. R. 1925 Bom. 538. Also *Trustees for the Improvement of Calcutta vs. Chandra Kanta Ghosh*, 47 Cal. 500, 32 C. L. J. 65, 47 I. A. 43.

[11] *Manickchand Mahata vs. Corporation of Calcutta*, 48 Cal. 916, A. I. R. 1921 Cal. 159, 66 I. C. 600. In this connection see also *District Board of Chittagong vs. Sasi Bhusan Pal and others*, A. I. R. 1936 Cal. 225, 40 C. W. N. 687, though relating to a stage when a declaration under section 6 had not issued, the question was the propriety of the District Board's resolution to proceed for the acquisition of certain land.

[12] *Bombay Improvement Trust vs. Jalbhoy*, 33 Bom. 483. Also *Babujan vs Secy. of State*, 4 C. L. J. 256 : *Collector of Belgaum vs. Bhima*, 10 Bom. L. R. 657 : *Municipal Commissioners, Bombay vs. M. Damodar*, 45 Bom. 725. See notes under sec. 16 post.

[13] *Ma Gyi vs. Secy of State*, 3 L. B. R. 117.

of acquisition of land must be strictly complied with, and the burden of proof of compliance rests upon those who claim statutory powers (or base their title upon the exercise of statutory provisions).[14]

Acquisition beyond declaration—trespass.

12. The Collector cannot acquire or give possession of land beyond the boundaries given in the declaration. If he does so, he commits an act of trespass [15], and so is a Company if the acquisition is for its purposes.

Superfluous lands.

13. Care has to be taken that superfluous lands in excess of what is required for the work, are not brought within the declaration for compulsory expropriation. As for Railways requiring lands, though not for the railway itself, but for getting earth for embankment, or for temporary quarters for the staff, and their disposal, see notes under section 3 at page 31. Improvement Trusts are however authorised to acquire superfluous lands (called surplus lands) which they can later, after their improvements have been effected, dispose of by sale at the "improved" values, or may exempt on payment of "betterment fee" for their improved values. There are similar provisions in some Municipal Acts also.[16]

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[14] *Rameswar Singh vs. Secy. of State* (P. C.) 1907, 34 Cal. 470, 11 C. W. N. 356, 5 C. L. J. 669.

[15] *Harish Chandra Neogy vs. Secy. of State* (1907), 11 C. W. N. 875 : *Gajendra Sahu vs. Secy. of State*, 8 C. L. J. 39.

[16] See Calcutta Improvement Act 1911, secs. 78 to 81. Also Calcutta Municipal Act 1923, secs. 310-11 and 468-472. Mr. H. Campbell in his Law of Land Acquisition observes that "the question of superfluous lands i. e. lands left over in the hands of the promoters after the acquisition as no longer required for the purpose, and on which there are many decisions in England, (G. W. Rly. Co. vs. May (1875) L. R. 7 H. L. 283 : Hooper vs. Bourne (1880) L. R. 5 Appl. Case 1) does not seem to arise in India after the declaration has been made as the lands when acquired vest absolutely in the new owners (see sec. 16) and there appears to be no reason why they cannot dispose of such land as they desire."

14. At the same time piece-meal acquisition of lands for the same purpose in the same tract by separate declarations in quick succession is deprecated [17]. There can be no piece-meal acquisition in the case of a single holding, but where acquisition is interrupted, it can be resumed afterwards.

Piece-meal acquisition deprecated.

15. Diversion of purpose from what is expressly declared in the declaration is *primafacie* objectionable [18], particularly in case of companies. There is thus usually an express condition of surrender, when the land is not used for the purposes for which acquired for a Company, in the agreement with them under section 41. In case of local authorities, they may, however, divert the purpose, if the new purpose is also one sanctioned by the statute regarding such authority [19].

Diversion of purpose.

7. Whenever any land shall have been so declared to be needed for a public purpose, or for a Company, the Local Government, or some officer authorized by the Local Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

After declaration, Collector to take order for acquisition.

Section 7 contains a matter which is largely one of executive instruction. The Collector should not commence action merely on the issue of the declaration under section 6, but must obtain a specific order from Government directing him to proceed. Questions of provision of fund and similar other preliminaries may have to be settled. Even when an order under section 7 has been received, the Collector, before he begins taking further action,

[17] *Fink vs. Secy. of State*, 34 Cal. 599 : *R. C. Sen vs. Trustees for the Improvement of Calcutta*, 48 Cal. 892, 33 C. L. J. 509, A. I. R. 1921 Cal. 340, 64 I. C. 577.

[18] *Gurudas Kundu Chowdhury vs. Secy. of State* 18 C. L. J. 244.

[19] *Lachmiswar Singh vs. Chairman, Darbhanga Municipality* (1890) (P. C.), 18 Cal. 99 (at page 101).

has to ascertain from the "local authority" concerned whether the necessary funds are available, and in case of Companies obtain deposit of the estimated cost. It has to be remembered that once notices to treat under section 9 have been issued, subsequent withdrawal from acquisition will necessitate payment of compensation under sec. 48 *post*. See notes under that section. See also note para 14 under sec. 9.

Land to be marked out, measured and planned.

8. The Collector shall thereupon cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be measured, and (if no plan has been made thereof) a plan to be made of the same.

Section 8 lays down what should be the first active step for the Collector to take, *viz.* demarcation, measurement and preparation of plan.

Demarcation to be done by the requiring body.

Demarcation :—This consists of marking out of the outer boundaries of the land to be acquired either by cutting trenches on the ground or by fixing marks, as posts, at every bend and corner. The object is not only to facilitate the measurement and preparation of acquisition-plan, but also to ensure that all private persons concerned know precisely what land is being taken. This demarcation has to be done by the requiring body, whether it is a department of Government, a local authority or a company ; but the Collector has to satisfy himself also that it

—Must correspond with the declaration : else may be *ultra vires* or require withdrawal.

is in accordance with the description given in the declaration and in the map referred to in the declaration. Any action by him on any land outside such description or plan, will be *ultra vires* and treated as trespass [1]. If any land within such description or plan in or with the declaration

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[1] *Harish Chandra Neogi vs. Secy. of State*, 11 C. W. N. 875 : *Gajendra Sahu vs. Secy. of State*, 8 C. L. J. 39.

is left out, a notification withdrawing such excluded land would be necessary under section 48 *post.*

In urban areas or homestead-sites in villages, it may not be possible to mark out the land with trenches or posts. In urban areas the boundaries of premises are usually well-defined with compound-walls, fences or the like. So also in homestead-sites in villages. But where portion only of a premises is intended to be taken, the boundary line should be marked prominently on the ground, or, where this is not possible, on the walls of the houses.

Measurement & preparation of plan :—These are for the Collector's purpose and his record, and must be done by the Collector's staff. In areas where there are already cadastral survey maps or other authoritative plans, these may be used and ought always to be used for the convenience and easy understanding of all concerned unless separate measurement and plan are required for special reasons.

The instructions (para 39) in the Bengal Land Acquisition Manual, are as below :—

Use of cadastral map.

"The Collector will, in the first place decide in consultation with the requiring Department or company, whether the Settlement map should be used. * * * * * *. When it is decided to use the Settlement map, it will not be necessary for the Collector to make a fresh survey, but he will proceed to verify the map and * * * * *."

Use of Smart's survey maps in Calcutta.

The settlement map (i. e. the cadastral survey map) is usually on a scale of 330 feet to an inch, but in congested areas of towns and village-sites the scale is 165 feet to an inch. For Calcutta and its suburbs there were several surveys, the last survey being in 1903-1913. It is called Smart's Survey. The scale is 50 feet to an inch, and these survey-sheets are usually taken as basis for land acquisition cases.

For acquisition for Railways, scales convenient to them, usually 100 feet to an inch, are adopted. The maps are prepared with reference to what is called the "centre line" of the railway, with separate plots serially mile by mile, "villages" in boundaries being shown across the plans. Ordinarily there is one plan with plot numbers for different pieces of land with different interests, for the entire area under one declaration. In a scheme-acquisition for the Calcutta Improvement Trust and the Calcutta Corporation, in which a large number of municipal premises are included in the same declaration, a separate plan with a separate record is prepared for each premises or group of premises held by a common owner.

Maps in Railway acquisitions.

Improvement Trust acquisitions.

Although the Collector may use the cadastral map or any other authoritative plan, such map or plan must be verified on the spot, and mistakes or changes if any found, must be corrected or correctly shown.

Obstruction. As for penalty for wilful obstruction, see section 46.

Notice to persons interested.

9. (*1*) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(*2*) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state

the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(*3*) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate.

(*4*) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under Part III of the Indian Post Office Act, 1866.

Importance of the notices under section 9.

This section provides for notices by the Collector on all persons interested, calling upon them to appear before him and file their claims for compensation. It is a very important stage in the proceedings : for, the effect of acquisition of land under the Act is that it vests absolutely in Government free from all encumbrances (sec. 16 post), and, barring the remedies by a reference to the Court (sec. 18 post) within a specified time, there is practically no remedy, at any rate no easy remedy, to a person who is not watchful and alert [1]. The

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[1] The following observation by Chandravarkar J. in *The matter of Government and Nanu Kothare and others* (1905), 30 Bom. 275 (at p. 282) though made with reference to notice under another section viz. sec. 12 (2)

section contemplates two kinds of notices, viz.—(1) a public notice inviting all persons interested to file claims within a specified time, and (2) special notice to the same effect on the owners, occupiers and such other persons as are known or believed to be interested in the land. The former notice throws a duty on all persons interested, to apprise the Collector of his interest and claim within the specified time: and the latter enjoins the Collector to ascertain with all reasonable means, the names of persons interested in the land : see para 9 *post*.

Two kinds of notices.

Duties of parties and of the Collector.

2. The manner of serving the public notice is indicated in sub-section (1), i. e. by affixing a copy "at convenient places on or near the land." Compare the service of the public notice under section 4(1) viz. "at convenient places in the locality." The manner of serving the special notices is laid down in section 45 *post*. The proviso to that section leaves it to the discretion of the Collector as to when the notice may be served by registered post; but sub-section (4) of section 9 requires that in case of notices under section 9, when the person resides outside the revenue district, the notice on such person *shall* be sent to him by registered post at his last known residence, address or place of business. This, however, does not bar the Collector to issue any individual notice by registered post in other circumstances also, if he thinks it necessary, vide proviso to section 45 *post* and notes there-under.

Manner of serving the notices.

3. The legal requirements of the "public notice" as laid down in sub-section (1) are *firstly* that it should state that the Government intends to take possession of the land, and *secondly* that claims for compensation for all interests should be made to the Collector. Sub-section (2), next, expands the first requirement by explaining

Public notice what to contain.

is pertinent :—"that means that in any case the proceedings shall be final after six months from the date of the award. This evidently contemplates that a party interested should not sit quiet, waiting for the Collector's notice or plead want of it, but should in any case be vigilant."

that the particulars[1] of the land so needed shall be stated and the second requirement by explaining that all persons interested shall be required to *appear* personally or by agent and state their claims, within a time not earlier than 15 days from the date of the publication of the notice. Apart from any special notice under sub-section (3), this "public notice" alone throws an obligation[2] on all persons claiming any interest in the compensation, and failure to comply throws the defaulting party into a legal disability to claim later any amount in excess of what may be awarded by the Collector, unless sufficient reasons for inability to comply are given, vide section 25(2) *post*.

Special notice—what to contain.

4. The legal requirements of the "special notice" are the same as for the public notice, vide sub-section (3), only the notice will have, from its nature, to be addressed to the individuals concerned. Apart from the general particulars which may be sufficient for the "public notice", the "special notice" should, presumably, also state the area, because the claims invited include objections to measurement also[3]. Under the English Law an

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[1] The nature of these particulars is not stated (see sec. 6 (2) ante and notes thereunder) : but presumably these should give a sufficient description to identify the land, whether by boundaries, municipal premise-numbers, or Settlement or cadastral survey plots etc. See also footnote (3) *post.*

[2] Campbell in his book on "Law of Land Acquisition" expresses an opinion that "the avoidance, when intentional, of making a claim" is a penal offence under sec. 176 of Indian Penal Code. This is doubtful in view of the word "may" in "may be made" in sub-sec. (1). The words "shall require" in sub-sec. (2) give a direction on the Collector, while the word used is "may" in sub-sec. (1), so far as the party is concerned. He is sufficiently penalised by sec. 25 (2) *post.*

[3] The measurement referred to is measurement under sec. 8 : but a measurement under that section need not necessarily be with notice,—at any rate there is no legal provision for such previous notice. It, therefore, becomes more imperative that the "special notice" under sec. 9 (3) should state the area, particularly as objection to measurement means ultimately objection to the calculated area, except where any definite piece or strip of land has disputing claimants.

accurate description of the land with area has to be given [4].

5. Where the notice did not use the precise words in the section but stated that the land was about to be taken by Government and there was also a defect in the statement requiring claims for all interests in such land, it was held that this was immaterial as the notice substantially complied with the requirements of the section [5]; but where it did not contain sufficient particulars to identify the land, and a franchise which affected the land was not described and also the notice fixed less than the prescribed time (15 days), the defect was considered material and justified a separate suit for compensation for damages in the Civil Court [6].

Defective notices.

6. On the other hand, when the public notice under sub-section (1) has issued, failure to issue a special notice under sub-section (3) or failure of service of such special notice strictly in the manner laid down in section 45 *post*, has been held not to vitiate the proceedings [7]. The word used in both sub-sections (1) & (3) is "shall", and the issue of both these

Non-issue of special notice —effect of

[4] Under the English Law a notice to treat must state—(i) an accurate description of the lands, their position and area, (ii) the willingness of the promoters to treat and to grant compensation for damages, (iii) whether it is intended to take minerals or not, and (iv) a demand for the particulars of interests of each party in the land : Sec. 18, Lands Clauses Consolidation Act, 1845 : *Errington vs. Met. Dist. Ry. Co.* (1881) 19 Ch. Div. 559.

[5] *Mahadevi vs. Neelamani* (1896), 20 Mad. 269.

[6] *Rameswar Singh vs. Secy. of State* (1907), 34 Cal. 470, 11 C. W. N. 856, 5 C. L. J. 669 : *Administrator-General vs. L. A. Collector of 24-Parganas* (1905), 12 C. W. N. 241 (at page 243), in which, amongst other irregularities, the notice under sec. 9(3) did not require the Administrator-General (claimant) to state the nature of his claim and was not such as is prescribed by sec. 9. This was severely criticised in a rule issued on the Collector refusing to make a reference, and the Collector was directed to proceed according to law.

[7] *Gangaram vs. Secy. of State* (1903), 30 Cal. 576 : But see *Nitai Dutt vs. Secy. of State*, 3 Pat. 304, A. I. R. 1924 Pat. 608, 81 I. C. 676, where notices wree served only on some of several brothers.

notices would seem thus to be obligatory, although the fact that the claimant had otherwise, knowledge regarding the acquisition proceedings, may be an important factor in deciding the nature of the order which would be proper when the acquisition has been completed. It has to be remembered that the High Court has no jurisdiction over the Collector's proceedings while they are at this stage, and no party can seek any relief before the Court against the Collector's irregularity, where any[8]. In the case of *Maharajah Rameswar Singh* (*ibid* in footnote (f)), the general position has been explained thus, though it is not clear whether the "public notice" only is meant or also the "special notice" :—

"Notice under section 9 is, therefore, essential to the exercise of the Collector's jurisdiction in order to give finality to the proceeding for the acquisition of land and finality to the award in which they terminate. The power of acquisition with all statutory limitations and directions for its use must be strictly pursued, and every essential pre-requisite to the jurisdiction called for by the statute must be strictly complied with."

Remedies.

7. The Courts have not, however, taken the extreme view of vitiating the land acquisition proceedings altogether, when, after possession under section 16, the land has already vested absolutely in the Government. Where no other relief under the Act is found available to the party, he has been, as in the above case, allowed to maintain a separate suit against the Collector (i. e. Government), to obtain any compensation which may be properly due to him [9]. The question of actual knowledge of the party, although not served with a formal "special notice," is an important element for consideration in every such case [10].

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[8] *Administrator-General vs. L. A. Collector*, 12 C. W. N. 241, at page 245.

[9] *Saibesh Chandra Sarkar vs. Sir Bejoy Chand Mahtab*, 26 C. W. N. 506, 65 I. C. 711.

[10] *Rameswar Singh vs. Secy. of State* (ibid) : *Burn and Co. vs. Secy. of State*, A. I. R. 1923 Cal. 518, 76 I. C. 570 : *Kasturi Pillai vs. Municipal Council, Erode*, 43 Mad. 280, 53 I. C. 646.

When the "public notice" under sub-section (1) has been duly served, a duty—(though not a legal obligation of the nature as would make non-compliance a penal offence)—is cast upon every person interested to apprise the Collector of his claim. If inspite of knowledge, the party did not do this, any relief sought by him outside the remedies specifically provided for inthe Act, would not be favourably looked at [11]. If the knowledge was *after* the award, but within 6 months from its date, he could apply for a reference under section 18, vide proviso (b) to sec. 18 (2) *post*. If his knowledge was subsequent to this period, he had still a remedy under the third proviso to sec. 31 (2) *post*, *viz*. by a regular suit against the person to whom the compensation money which he claims may have been paid. It is only where, in this last circumstance, his claim was such as constituted an item totally omitted by the Collector [12] and for which the claimant could seek no relief against any other person on the ground that such person had wrongly taken payment (as the case of *Maharajah Rameswar Singh* was) a separate suit by him against the Collector would be maintainable. But the relief, if any, to which he may be found entitled to, is not necessarily to declare the acquisition null and void ; the relief would be an order for payment of such monetary compensation

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[11] *Kanhai Lal vs. Secy of State*, 14 I. C. 214 (1900) : where the claimant (a tenant) had been perfectly cognizant of the proceedings and had wilfully neglected to make any claim : Also *Gangaram Marwari vs. Secy. of State* (1903), 30 Cal. 576, where though no notice was served, the claimant knew of the proceedings and declined to appear merely on the ground that no notice had been served on him.

[12] Such an omission may be a mere mistake, for instance an occupant of a room in a house claiming damages for removal : and in such case there would not seem to be any bar to the Collector's making a supplementary award. Sec. 124 of the English Lands Clauses Consolidation Act of 1845, protects promoters against *bona fide* mistakes, but entitles the parties to "second assessment" i. e. supplementary award within 6 months from the date on which an omitted interest by such mistakes, is brought to their notice. See also paragraph 63 of the Bengal Land Acquisition Manual for mistakes in the award due to clerical error and the like, which may be rectified by the Collector ; also Sec. 12 (1) and notes thereunder.

as may be properly due to him, that is to say, as would have been payable to him if his claim had been considered at the time of the award, with of course, the usual interest from the date of possession.

Non-receipt of notice-no bar to making of claim

8. It follows from the above exposition that a person interested having come to know of the intended acquisition, but not receiving any special notice under section 9 (2), should not remain quiet, but forthwith bestir himself and file a claim statement before the Collector [see footnote at page 57]. A person interested is not debarred from making a claim before the Collector at any time before award, even though the period of 15 days has elapsed [13]. But a claim made after the award cannot be regarded as a claim made pursuant to notice under section 9 of the Act [14]. In such case, unless he has not been served with or received any special notice under section 9(3), he has to file a petition with the usual court-fee stamp, along with his claim statements, explaining his reasons for non-compliance at the proper time. On the other hand, non-filing of a claim even when a person has come to know of the intended acquisition may put him into difficulties later. In the case of *Basamal vs. Tajamal*, 16 All. 78, it was held that a mortgage-decree-holder in such circumstances could not attach the compensation awarded to the mortgagor. This view was however dissented from in the Calcutta case of *Jatoni vs. Amor*, 13 C. W. N. 350.

Collector's statement of persons interested to be as complete as possible.

9. While the position of the party is as explained above, sub-section (3) which enjoins that "the Collector shall also serve notice * * * on *all* such persons known or believed to be interested therein or to be entitled to act for persons so interested" requires that the Collector should prepare as complete a statement of all such persons as possible. Occupiers

[13] *Secy. of State vs. Sohan Lal*, 60 P. R. 1918, 44 I. C. 883 : *L. A. Officer vs. Fakir Mahomed*, 148 I. C. 699, 1933 A. I. R. Sind. 124.

[14] *Secy. of State vs. Gobinda Lal Basack*, 12 C. W. N. 263 : *Secy. of State vs. Bishan*, 33 All. 376, 9. I. C. 428.

and other persons *known or believed to be interested* in the land, include not only the proprietors, tenants and sub-tenants and lessees and sub-lessees, but also mortgagees, trustees, executors, guardians in the case of minors, receivers appointed by Court, beneficiaries, and persons having a charge on the property including reversioners in the case of widow's estates and also persons having a right of easement (such as air, light, way, etc.) over the land, and also persons over whose property the owner of the land under acquisition has such right. The Collector has the power to issue notice under section 10 *post* on any person interested, to furnish him with a statement of all other persons having an interest in the land, and non-compliance with such notice is a penal offence under sections 175 and 176 of the Indian Penal code.

Use of record of rights.

10. In areas where there has been a record-of-rights, the entries in such record are taken as the basis to start with : but these must be verified and brought up-to-date (for, the record-of-rights may be many years old) by local verification and necessary enquiries.

-of Municipal Registers.

In municipal areas, the assessment register, the license register and other registers of the municipality should be consulted.

-of Registration office.

Enquiries should be made also in the registration offices whether the land is mortgaged, and if so with whom. Proceeding in this manner the names and addresses of all persons interested may, in most cases, be obtained at this stage ; but it is obvious at the same time that the names of some co-sharers, beneficiaries, mortgagees (there may be equitable mortgage without registration) and the like, are likely to be missed. These very often come to light when

Special notices required for persons coming to light at later stage :

claim-statements are filed by some in compliance with the public or special notices, or when statements as may be required under section 10 *post* are filed ; and even at a latter stage when titles of the claimants are scrutinised. When new persons thus come light, special notices under sub-section (3) should forthwith issue on such persons, with 15 days' time to

file claims. It has been held that if all the persons interested appear before the Collector, they can not otherwise take the objection that no notice was served on individuals [15]. The position of the Collector is that he must include in his award the names of "all persons known or believed to be interested in the land, of whom or of whose claims, he has information, *whether or not they have respectively appeared before him*" (section 11 (iii) *post*). He may award "nil" to any person, but he cannot omit any such person and he must issue notice under section 12 (2) also on every such person, so that such person may, if he so wishes, seek his remedy by applying for reference under section 18 *post*, or it may be a case for reference under section 30 *post* by the Collector of his own motion.

Claim statements what to contain.

11. The legal requirements [16] of a claim statement as specified in sub-section (2) are :—

(*a*) nature of interest claimed :

(*b*) the amount and particulars of the claims to compensation : and,

(*c*) any objection to the measurement (*i.e.* area).

If there is an omission in material respect, it may prejudice the party's claims later, vide section 25 *post* and notes there-under. Where the claimant supplemented before the Reference Court his claim, adding a new item *viz.* construction of a new wall, the claim was disallowed [17]. But where subsequent to the acquisition proceedings damages are ascertained which could not reasonably be foreseen at the time of the acquisition proceedings, a suit for the same may be maintainable [18].

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[15] *Kashi Prasad Singh vs. Secy. of State.* (Appeal from Original decree No. 172 of 1901, Cal. High Court.)

[16] Under sec. 18 of the English Lands Clauses Consolidation Act of 1845, the notice calling for claims, is a "demand" from the parties for "the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof".

[17] *Secy. of State vs. C. R. Subramania Aiyar,* 127 I. C. 298, 1930 A. I. R. Mad. 576.

[18] *Rameswar Singh vs. Secy. of State* (ibid) at pages 485-86, and the several cases cited therein.

12. The period allowed in sub-section 2 for making claim statements is *at least* 15 days from the date of the *publication* of the notice. Strictly interpreted, this means 15 days from the publication of the "public notice" under sub-sec. (1), and not from the date of the *service* of the "special notice" under sub-sec. (3). In this view, it would seem that the Collector need not allow 15 days in case of the special notices[19], but as a matter of practice, this time is allowed, and it is not unreasonable. Under the English law, 21 days have to be allowed from the date of the service of the corresponding notices on individual parties, sec. 21 of the Lands Clauses Consolidation Act, 1845. "Fifteen days" for Indian conditions, is therefore not too long a time, particularly when the disabilities imposed for mistakes or omissions in the claim statement by sec. 25 are considered. It has been held in a number of cases, that a shorter interval than 15 days from the date of the service of individual notices would be an irregularity which would make the provisions of section 25 (2) inapplicable[20].

Rule of 15 days notice.

13. A claim statement need not be in writing, unless the Collector requires it to be in writing, in his notice. When in writing, it is exempted from court-fee under section 19 (xxii) of the Court Fees Act VII of 1870. But when it embodies a petition, as for example prayer for excusing delay in filing, the usual court-fee as for the petition has to be paid.

Claim statement need not be in writing : no Court-fee.

14. At this stage the Collector is not a Court, and his proceedings are not subject to revision by the High Court ;

[19] *Birbal vs. Collector of Moradabad*, 49 All. 145, A. I. R, 1927 All. 183, 91 I. C. 806. See also *Gokul Krishna Banerji vs. Secy. of State*, 137 I. C. 116, A. I. R. 1932 Pat. 184.

[20] *Venkataram Ayyar vs. Collector of Tanjore*, 53 Mad. 921, 128 I. C. 147, 1930 A. I. R. Mad. 836 : *District Labour Officer vs. Veeraghanta*, 129 I. C. 251, 1931 A. I. R. Mad. 50 : *Tara Prasad vs. Secy. of State*, 34 C. W. N. 823 (at p. 825), A. I. R. 1930 Cal. 471. Also *Collector, Chingleput vs. Kadar Mohideen*, 95 I. C. 883, A. I. R. 1926 Mad. 782.

although the consequences of any irregularity by the Collector would not be overlooked, if seriously prejudicial to a party, when the matter comes up to Court at a later stage i. e. after the award under section 11 has been made. See para 6 above and footnote (8). Not being a Court the Collector cannot administer oath, and a false statement[21] in the claim would not render the party liable under sec. 193 I. P. C., nor under sec. 177 I. P. C., because the "claim statement" can hardly be said to be a statement which the party is "bound to furnish" (*contrast* sec. 10(2) *post* : and see footnote (2) *ante*) : but wilful false information of a matter of fact, may make a party liable under sec. 182 I. P. C. A matter of "fact" has to be distinguished from a matter of an exaggerated claim or an over-estimate[21] of the value which cannot constitute a false statement.

Collector not a Court—false statement of information in claim-statement.

15. Notice under sec. 9, or more strictly the special notice under sec. 9(3), corresponds to "notice to treat" under sec. 13 of the English Lands Clauses Consolidation Act 1845. The legal effect of a notice to treat, as explained in Halsbury, is that "it binds the promoters to take the land and binds the land-owner to give up the land subject to his being paid compensation. Until the price is ascertained the land remains the property of the land-owner, but *both parties* have the right to have the price ascertained and the purchase completed in the manner provided by the Lands Clauses Acts". There is no provision in the Indian Land Acquisition Act enabling the land-owner to compel acquisition or obtain relief by separate action for damages and mandamus, as is permissible under the English Land Acquisition Act, but section 48 *post* provides for damages in consequence of notice or any proceedings, when the acquisition is eventually

Notice under sec. 9 and "notice to treat" under the English law.

[21] *Durgadas vs. Q. E.* (1900), 27 Cal. 820 : Also *Durgadas vs. Umesh Chandra Sen, L. A. Dy. Collector*, 27 Cal. 985 where it was held that no prosecution for giving false information can be instituted until the Civil Court before which the matter of the same information was pending, had finally disposed of it.

withdrawn. In case of delay in completing acquisition, section 23 (1) sixthly, provides similarly for damages between the date of the publication of the declaration under sec. 6 and the date of taking possession.

Power to require and enforce the making of statements as to names and interests.

10. (*1*) The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

(*2*) Every person required to make or deliver a statement under this section or section 9 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

Punishment for non-compliance.

See notes under section 9 *ante*, which explain the necessity of a complete statement of all persons interested. Section 10 authorises the Collector to require any person interested to furnish him with a statement of the names of all other persons possessing any interest in the land, in whatever capacity. Non-compliance with this requisition is punishable under sections 175 and 176 of the Indian Penal Code.

False statement.

The Collector is, however, not a Court at this stage, and cannot administer oath ; and a false statement in compliance with notice under section 10 is not punishable under section 193 of the Indian Penal Code :

Durgadas Rakshit vs. Umesh Chandra Sen, 27 Cal. 985. But there would seem to be no bar to a prosecution under section 182 of the Indian Penal Code, if the circumstances of the case otherwise justify such prosecution. Time to be allowed for such requisition is also 15 days : and the usual practice is to issue such requisition along with the special notice under section 9 (3).

Time to be allowed :

Manner of Service.

As for the manner of service of the requisition notice, see section 45 *post*.

Enquiry into Measurements, Value and Claims, and Award by Collector.

Enquiry and award by Collector.

11. On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land [at the date of the publication of the notification under section 4, sub-section (*1*)], and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of—

(*i*) the true area of the land ;

(*ii*) the compensation which in his opinion should be allowed for the land ; and

(*iii*) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

Scope of the section.

The Collector has already measured the land and prepared a plan, unders ection 8 *ante*. He has also given general notice inviting all persons interested to state their claims to him, (section 9 (1) & (2)). Such of these persons as are known or believed to be interested have also been served with special notices (section 9 (3) *ante*) to state their claims. His next stage is to hear these persons and then come to an opinion as to the amounts of compensation to be awarded and as to the apportionment of these amounts amongst the several claimants Section 11 deals with this stage of the Collector's proceeding and indicates what particulars should be stated in the award. In *Ramchandra Rao vs. Rama Chandra Rao*[1] their Lordships of the Privy Council observed—"the award as constituted by statute is nothing but an award which states the area of the land, the compensation to be allowed and the apportionment among the persons interested in the land of whose claims the Collector has information."

Proceedings not judicial.

2. The Collector's proceedings are not, however, judicial[2] although he can enforce attendance of witnesses and production of documents for the purpose of his enquiry, under the Civil Procedure Code, vide section 14 *post*. The basis of his opinion is thus not confined to what materials the party would place before him. In fact, except where a party brings an expert valuer, all necessary materials[3] have to be and are, collected by the Collector himself, and he has to inspect the lands, any buildings or structures, shops and other business on them and so forth, as a valuer would do for making a proper valuation. He

Data to be collected by the Collector.

[1] 67. I. C. 408, 35 C. L. J. 545, A. I. R. 1922 P. C. 80, 49 I. A. 129, 26 C. W. N. 718, 45 Mad. 320.

[2] *Administrator General vs. Collector of 24 Parganas* 12 C. W. N. 241: *Durgadas Rakhit vs. Q. E.*, 27 Cal. 820: *Durgadas Rakhit vs. Umesh Chandra Sen, LA. Officer*, 27 Cal. 985.

[3] These materials comprise all *data* necessary for the valuation of the land and for assessment of damages according to principles enunciated in secs. 23 and 24 *post*, and the judicial opinions held in the matter of determination of compensation in compulsory land acquisition. See notes under these

can introduce his own knowledge thus derived and his experience[4].

3. The usual procedure for the Collector is first to inspect the property in the presence of the parties concerned, hear what special matters they would bring to his notice, and also observe the advantages, disadvantages and other circumstances such as easements etc., which would have to be considered in properly appraising the amount of compensation whether for "land-value" or for "damages." These matters are the same as are indicated in sections 23 and 24 *post* for the guidance of the Court, *vide* section 15 *post*. Where there are buildings or other structures on the land he verifies the measurements taken by his surveyor, and observes the nature and conditions of these structures. He also observes the standing crops, and verifies the enumeration of trees etc. for which value would have to be paid.

Collector's inspection of the land and buildings etc.

4. Having done this, be fixes a date (unless, as may be done in simple cases, he can settle the amounts etc. on the spot) for a hearing to the party or a discussion with any expert valuer[5] as may be brought by the party. This enquiry may be adjourned from time to time, as may be necessary for collection of further materials or otherwise (see section 13 *post*). The position of the Collector is that of an "agent"[6] of Government and at the same time an "arbitrator" having the confidence of the public, who would with an open mind balance the weight of materials and

Hearing and discussion with the party:

Collector's position.

sections *post*. Instances of sales of similar lands in the vicinity are obtained from the registration offices, municipal offices, courts and local enquiry. Rentals and fair rentals are ascertained by local enquiry, and in municipal areas, municipal assessment valuations are of help. Previous awards in the vicinity would be obtained from the Collector's own office.

4 *Padamsi vs. Collector of Thana*, 23 Bom. L. R. 779, 64 I. C. 103, 46 Bom. 866.

5 Opinion of expert-valuers is relevant in land acquisition cases. See notes under section 23 (1) *post*.

6 See sec. 2 (c) *ante*. *Ezra vs. Secy. of State*, 32 Cal. 605 (P. C.).

arguments urged by the party and the weight of other materials which are available and of other arguments which appear to his mind or are urged by the requiring body. He then forms his opinion about the amounts of compensation, and offers it to the parties ; and by following this process. the parties are in most cases agreed [7]. Whether they are agreed or not, the Collector then proceeds to draw up his award according to his view.

Enquiry for apportionment.

5. The Collector's enquiry comprises also determination of what persons are entitled to the compensation or any portion of it. For this purpose he has to be satisfied from the title-deeds etc. to be filed by the parties, that they own the title they claim : and he is given the power to enforce attendance of witnesses and production of documents, vide section 14 *post.* Where there are several persons interested, whether as co-owners. mortgagees, lessees, tenants or sub-tenants, easement-possessers, beneficieries and so forth, he has to examine their respective claims and determine how the total amount is to be apportioned

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[7] Valuation of land, particularly in towns, or of building, cannot be made with mathematical precision and there is always a debatable margin, sometimes pretty wide, for controversy. Valuations of the same property made by different expert valuers thus often differ considerably. The Collector discusses and considers all these, and is very often able to clear up the doubtful points and come to a figure acceptable both by him and the party. Really his procedure is to consider all pros and cons with a judicial mind, though his proceeding is informal. These discussions are of the nature of discussion before an arbitrator, and are treated as made "without prejudice" to either the Collector or the party. The Collector usually makes a draft or provisional award, and then commences his discussion with the party or his expert on its basis. The following observation by the President of the Calcutta Improvement Tribunal in a case decided in January, 1932 (re ; Manmohan Theatre), is illustrative :—

"The enquiry by the Collector is not a judicial proceeding, and he arrives at his conclusion upon facts gathered by himself and his subordinates and upon discussion with the claimant or his representative. Such discussions are often conducted upon a basis of give and take and therefore any argument or basis of conversation used on such occasions by the Collector should not be admitted as evidence against the Secretary of State."

amongst them. If they agree, well and good. If they do not agree, he will try to apportion to the best of his judgment on the materials before him, leaving it to the disputants either to settle amongst themselves (see section 29 *post*), or to take the matter to the Court by reference under section 18, or himself refer under section 30 *post*. The Collector cannot omit from his award the name of any person who has made a claim (for he is, from the definition, a "person interested" : section 3(b) *ante*), although the Collector finds him not entitled to any compensation and would award "nil" for him, unless such person withdraws his claim. Similarly, he cannot omit persons who are known or believed by him to be interested but who do not put forward any claim and do not appear before him, *vide* the words "whether or not they have appeared before him"

Form of award—two parts, valuation and apportionment.

6. The award is then drawn up in the proper form. This form is laid down in the Executive Instructions of the Local Governments. The legal requirements of this Form are those specified in items (i), (ii) and (iii) of sectfon 11. When it has been so drawn up and then signed by the Collector, it is an award made under this section[8]. Proposals or notes during enquiry or discussion would not be his award. Even a proposal made by the Collector after due enquiries, to the Consulting Surveyor for approval does not constitute an award[9]; nor is mere initialling[10]. The plan in the section is that the Collector should first show *in one part* the true area of the land and the total amount of compensation he awards : and *in another part* the names of the persons entitled to it with apportionment of the amount (viz. of the total amount in the first part), amongst the persons interested where there are several such, e. g. co-sharers, mortgagees, beneficieries, lessees, tenants and

[8] *L. E. J. Solomon vs. H. C. Stork* (1934), 38 C. W. N. 844, 60 C. L. J. 184, A. I. R. 1934 Cal 758.

[9] *Padamsi Narain vs. Collector of Thana*, A. I. R. 1922 Bom. 161, 46 Bom. 866, 64 I. C. 108 : *Kooverbai vs. Asstt. Collector, Surat* 22 Bom. L. R. 1186, 59 I. C. 429.

[10] *Macdonald vs. Secy. of State*, 4 I. C. 914, 19 P. L. R. 1909.

sub-tenants, and so forth. The usual practice in drawing up the first part is first to show the market-value of the land (clause first of section 23(1)), and then the damages (clauses secondly to sixthly of section 23(1)). It is sufficient for the Collector to show the totals of these several damages without specifying the amount for each kind[11]. The additional allowance of 15 per cent under section 23(2) *post* is then added on the market-value, and then a total is made.

Reasons not required in the award.

The Collector is not required to state in his award the reasons for his determining the amounts of compensation. Compare section 26(1) which specifically requires grounds of award to be stated by the Court when the award is made by it on a reference from the Collector. The Collector has, however, to state the ground on which the amount of compensation is determined, in his reference to the Court, if there is a reference on the ground of valuation (section 19(1) (d) *post*).

Aggregate value of land to be shown in the first part.

7. The market-value of the land to be shown in the first part of the award is the aggregate[12] value of all interests, e. g. mortgages, leases, tenancies, easements etc., as if the land was fee-simple or *lakheraj* without any kind of incumbrance[13]: so that when this full amount was determined the total liability of the Collector on account of the value of the land

[11] *Secy. of State vs. F. E. Dinshaw*, 1938 A. I. R. Sindh 21. The usual practice is to show the amount of damages under clause secondly of section 23 (1) separately and then to lump together the damages under the other clauses of the section. Compare here the requirements of an award by the Court in section 26 *post*: the amount awarded under each of the several clauses of section 23 (1) has to be separately shown in the court's award.

[12] *Bombay Improvement Trust vs. Jalbhoy* (1908), 33 Bom. 483 : *Collector of Belgaum vs. Bhima* (1908) 10 Bom. L. R. 657 : *Collector of Dacca vs. Asrafali*, A. I. R. 1933 Cal. 312, 143 I. C. 367, 56 C. L. J. 558 : *Prag Narain vs. Collector of Agra* (1931), 59 I. A. 155, 54 All. 286, 36 C. W. N. 579, A. I. R. 1932 (P. C.) 102, 136 I. C. 449.

[13] Compare clause sixth (section 6) of the old Land Acquisition Regulation I of 1824 which laid down that the "arbitrators" were to determine not only the value (i. e. the capitalised value) of the net rent derived by the

would be fixed, and what would remain would only be a distribution of this amount amongst the several persons interested *inter se*, a matter on which these persons might litigate on a reference to the Court, if they liked, but without affecting the total valuation made by the Collector, unless the valuation itself was otherwise objected to. The manner of determination of this full or aggregate value may either be by imagining a fee simple or *lakheraj* property, free of any incumbrance (convenient in town areas), or by adding up[14] the market-values of subordinate tenancy interests (usually necessary when, as in agricultural areas these interests have special statutory or customary rights and liabilities) : see notes under section 23 (1) clause *first*.

Exceptions :— (i) Mines and minerals.

8. Mines and minerals when excluded from acquisition under the special provisions in the Land Acquisition (Mines) Act XVIII of 1885, would not be included in the value of land in the Collector's award.

(ii) Value of Government interest.

As regards the value of any limited interest of Government in the land (e. g. when there is a lessee or other tenant or a co-owner), when there is no dispute and the acquisition is for a Department of Government, the value of the interest of Government may be excluded from the aggregate value in the Collector's award[15]. If included, it will in any case be only a mere paper-

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Sudder Malguzer but also "the value of other interests possessed therein as if the whole shall constitute what would have been a fair value for the property, supposing it to have been *lakhraj* and free from all burthen or incumbrance." See *Introduction* ante.

[14] *Fink vs. Secy. of State* (1907), 34 Cal. 599, at page 606.

[15] *Government of Bombay vs. Esuf Ali* (1909), 34 Bom. 618, 5 I. C. 621, in which it has been held that there is no insuperable objection to adapting the procedure on the footing that where there was no dispute as to the interest claimed by Government, it was the outstanding interest which was the only thing to be acquired.

account. But where there is dispute[16] as regards the Government's claim to an interest in the land, or where the acquisition is for a company or local authority, the aggregate value of the land in the Collector's award should include the value of this interest[17]. The argument of paper-account does not apply where the cost of acquisition is borne not by Government but by a company or local authority[18]: for, it involves loss of the assets or the revenues of the Government.

Capitalised value of Govt. revenue.

9. Where the land is subject to payment of land-revenue to Government, and the acquisition is made for a company or local authority (i. e. not for a Department of Government), the land-revenue or proportionate land-revenue is capitalised as due to the Government, and added to the total amount.

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[16] *Bejoy Kumar Addy vs. Secy. of State* (1916), 25 C.L.J. 476, 39 I.C. 889. The Collector had not done this and the High Court held that the award was not a proper award and remanded it to the Collector for rectification.

[17] As for instance in *Mangaldas Giridhardas vs. Assistant Collector of Prant*, Ahmedabad (1920), 45 Bom. 277, the award was made thus :—

Total for land	...	Rs.	18,634
for buildings	...	Rs.	4,500
		Rs.	160
for trees	...	Rs.	400
		Rs.	23,694/- plus

additional compensation at 15%.

In the apportionment part, it was divided thus :—

Government	...	Rs. 19,194 plus additional compensation at 15%
Party	...	Rs. 4,500 plus additional compensation at 15%
Total		Rs. 23,694/- plus additional compensation at 15%

The Court upheld the total, but apportioned it thus :—

Government	...	Rs. 18,648/- plus the additional compensation at 15%
Party	...	Rs. 5,046/- plus the additional compensation at 15%
Total		Rs. 23,694/- plus the additional compensation at 15%

This was a case of cantonment land in which there was a tenant with a bungalow. The Privy Council case of *Cantonment Committee, Barrackpore vs. Satis Chandra Sen* (1931), 58 Cal. 858 was similar.

[18] *Government of Bombay vs. Eusof Ali* ibid foot 15. See also notes under section 8 (b) *ante*.

10. For the second part of the award, where the parties do not agree and the Collector on the materials available to him, is unable to apportion the amount or any portion of the amount amongst the several claimants, he makes a joint award in favour of all of them and then makes a reference to the Court under section 30 *post* for proper distribution.

Joint award.

11. The Collector cannot omit from his award the name of any person who has made a claim, although the Collector finds him not entitled to any compensation and would award "nil" for him, unless such person withdraws his claim[19]. He is nonetheless a "person interested"—vide sec.3(b) *ante* and notes thereunder. Similarly the Collector cannot omit a person whom he knows or believes to be interested in the land or of whose claims he has information, although such person may not appear before him ; *vide* (iii) of this section.

All persons interested to be included in the award whether appearing or not.

12. The words "at the date of the publication of the notification under section 4 sub-section (1)" were inserted by the Amendment Act XXXVIII of 1923, along with similar amendment by that Act in clauses *first* of section 23(1), and *seventhly* of section 24 *post*. This makes it clear that the material time for which the market-value of the land would be determined by the Collector, should be the same as would be taken by the Court, in case there was a reference against his award. The amendment in this section or in sections 23 and 24, does not however affect the position in acquisitions which are made by reason of the provisions of this Act being inducted for such acquisitions by any special or local Act passed prior to 1923. [20]

Amendment in 1923.

[19] Thus included such person would receive notice of award under section 12 (2) *post* and his time for objecting and applying for reference would be 6 weeks from the service of the notice : while if he is not so included his time will be six months from the date of the award.

[20] *Secy. of State vs. Hindusthan Co-operative Insurance Society* (P.C.) 59 Cal. 55, 58 I.A. 259.

13. It is not necessary that there should be one award for all lands covered by one declaration. It is however, a different matter when there is only one holding. The Land Acquisition Act refers only to one notice, one proceeding and one award to be given, taken and made regarding one holding and one ownership[21]. Where however, there are two awards in respect of the same piece of land they may be read together and treated as one[22]. In view of the decision in this case and convenience to all concerned, the meaning of "land" in a declaration need not be strained too much, The instructions in Bengal Land Acquisition Manual, paragraph 54 are as follows :—

Whether one declaration should have one award only.

"It is often necessary to make separate awards for different portions of the land covered by the same declaration. The objects aimed at are :—(1) facility in calculating the true value of the interest of each person claiming compensation for the land : (2) avoidance of delay in payment of compensation : (3) intelligibility of the award : (4) expeditious disposal of work : (5) prevention of inconvenience to landlords and the Court through multiplicity of references. Where different raiyats under the same superior interest have different histories or hold under markedly different rates of rents, it is better to make separate groups for each group of homogeneous raiyats."

What is necessary is that the award for any particular piece of land is complete in itself including all interests, and if for any special reason such an award is treated in parts, the several parts should be treated as forming one award[22].

12. (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively

Award of Collector when to be final

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[21] *R. C. Sen vs. The Calcutta Improvement Trust,* 38 C.L.J. 509, 48 Cal. 892, 64 I.C. 577.

[22] *Prag Narain vs, Collector of Agra,* ibid foot 12.

appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

Filing of the award—meaning of

"Such award" means the award made under the preceeding section 11. Having "made" his award under that section the Collector is next required to "file" it in his office under this section : that is to say, make it a part of his record and thus open to inspection by (or copies to) persons interested. It is only when the award has been so "filed" that it becomes final [1]. So long it is not filed, it can be modified and is not binding on Government.[2] The award must be made in the presence of or communicated to the party.[3] Where a time intervened between the "making" of the award under section 11 and its "filing" under this section, there was some controversy [4] as to the date from which the period of limitation for objecting and applying for reference under section 18, would be computed. But since it has been held that an award is not an award made under section 11 until it has been drawn up in the proper form with all particulars of apportionment etc. as required by that section and signed by the Collector[5], there would be rarely, if at all, any occasion for interval between the "making" and "filing" of the award.

[1] *Padamsi Narayan vs. Collector of Thana*, 46 Bom. 366, 23 Bom. L.R. 779.

[2] *Kooverbhai vs. Asst. Collector, Surat*, 59 I.C. 429.

[3] Macdonald *vs. Secy. of State*, 4 I.C. 914, 19 P.L.R. 1909, 4 I.C. 914. See also *Re. Sukhanand Gurmukh*, 4 I.C. 279, 34 Bom. 488 : *Haridas Pal vs. Municipal Board, Lucknow*, 22 I.C. 652.

[4] See notes under section 18 *post*.

[5] *L. E. J. Solomon vs. H. C. Stork* (1934) 38 C.W.N. 844, 60 C.L.J. 184.

Final and conclusive

2. *Final and conclusive evidence* :—The award is final as soon as it is "filed", and it is then conclusive evidence and thus fully effective as between the Collector on the one side and the persons interested on the other, both as regards valuation (including measurement) and apportionment,—[6] but "except as hereinafter provided." This refers to the right of a person who is dissatisfied with the Collector's award, to object and apply for reference to the Court under sec. 18 *post* and within the time specified therein. Unless he does this, he is concluded as against the Collector (i. e. the department of Government, local authority or company for whose purpose the Collector acquires the land), and the person is without any remedy. This follows the general principle [7] of law regarding interpretation of special statutes (such as the Land Acquisition Act) which is summed up in Halsbury thus :—"an individual cannot maintain an action and is without remedy unless such a remedy is provided by the statute."

except for the remedies specifically provided in the Act

Position not affected by reason of a party not appearing or omitted.

3,. And this applies equally to all persons interested "whether they have respectively appeard before the Collector or not", and it will be noted that "persons interested" include persons *claiming* an interest (definition sec. 3 (b) *ante*). For such persons who do not appear before the Collector or do not receive any notice from him under sub section (2)

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[6] *Vide* the distinction in clauses (i), (ii) and (iii) in sec. 11 *ante*. Clause (ii) would include "damages" under clauses secondly to sixthly of sec. 23 (1) : and taking the intention of section 12 (1) as a whole, the expression "value of land" would include the value i.e. the amount of compensation for the damages also.

[7] *East Freemantle Corporation vs. Annois* (1902) A.C. 213 (at page 217) P.C. See also *Joges Chandra vs. Secy. of State*, 29 C.L.J. 58 : *Bhandi Singh vs. Ramadhin Roy*, 10 C.W.N. 991 : referring to the Privy Council case of *Raja Nilmani Singh Deo vs. Rambandhu Rai* (P.C.) 7 Cal. 888 : *Saibesh Chandra Sarkar vs. Sir Bijoy Chand* (1921), 26 C.W.N. 506, 65 I.C. 711, 1922 A.I.R. Cal. 4.

of this section, an extended period of six months for applying for reference, is laid down in *proviso* (b) of section 18 (2) *post*. The plan of the Act is that in any case the proceedings shall be final after six months from the date of the award.[8]

Apportionment—position of parties *inter se*.

4. The expression "final and conclusive evidence" does not apply to persons interested *inter se*, that is to say in the apportionment of the total amount amongst them. They can vary the Collector's apportionment by agreement amongst themselves, and under section 29 *post*, such agreement[9] is then conclusive evidence of the correctness of the apportionment. When there is no such agreement, any party dissatisfied may take the matter of apportionment to the Court by applying for a reference under section 18 *post* within the time specified therein. Under certain circumstances he has a remedy[10] under the third proviso to sec. 31 (2) even after that time, against the person who may have received the payment.

Binds Govt. & also the requiring body or Company.

5. But as regards the Collector, his award binds him conclusively, and as he is in the position of an agent of the Government, and his order not being a "judicial" one, it binds Government also. It binds also the requiring body or Company who cannot claim a reduction of the amount awarded by the Collector[11]. See also sec. 25 *post* and the notes thereunder.

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[8] *In the matter of Govt. and Nanu Kothare*, 30 Bom. 275 (at p. 282).

[9] When one of the parties agrees to the portion of the total amount apportioned to him, but the other party objects to the total amount and obtains an enhancement, the former is not entitled to have his proportion of the enhanced amount : *Secy. of State vs. Naresh Chandra Bose*, 1926 A.I.R. Cal. 1000, 44 C.L.J. 1, 95 I.C. 459.

[10] *Saibesh Chandra Sarkar vs. Sir Bijoy Chand*, ibid. foot (7). See also notes under 3rd proviso to sec. 31(2) *post*.

[11] *Gangadas Mulji vs. Haji Ali*, 36 I.C. 433 : *Dosabhai Bezanji vs. Special Officer*, 16 I.C. 549, 36 Bom 599 : *Secy. of State vs. Qamar Ali*, 51 I.C. 501.

6. It follows that the Collector cannot revise or reopen an award once it has been "filed" under this section[12]: This question arose incidentally in a Calcutta case[13], and the learned Judges expressed doubt as to whether the Collector was competent to reopen his award already "filed", observing, on the procedure of fresh claim in the case, thus :—"It is inconceiveable how if his administrative functions had ceased the Collector could on the 11th October allow time up to the 1st November to file a statement of claim, having already made and filed his award under sections 11 and 12 of the Act." But so long as the Collector's act does not prejudice any person interested, a supplementary award may not be irregular, be it taken as a waiver on the part of the Collector as an agent of Government or otherwise.

Can Collector reopen? supplementary award.

7. The Collector's proceeding not being "judicial" (see notes under sec. 11) his award is not a decree and cannot be enforced as such. It is thus of the nature of an "offer" by the Collector as agent of Government or an expression of his opinion as to the proper amounts of compensation and the persons entitled to them. It does not necessarily follow that the acquisition would be completed by payment under section 31(1) or taking of possession under section 16 ; for, Government may withdraw at any time before taking possession (vide sec. 48), and in such case the party cannot compel payment of the Collector's award[14]. If, however, acquisition is completed and possession

Collector's award not enforcible as a decree

[12] Clerical errors would be reasonably excepted. The Bengal Executive Instructions (Paragraph 63) permit a supplementary award "in cases of clerical error, error of calculation or manifest *omission to deal with a part of the claim made by an* interested party." The portion in italics takes the matter beyond mere clerical or calculation mistakes.

[13] *Administrator General, Bengal vs. Collector of 24 Parganas*, (1905), 12 C.W.N. 241.

[14] Taking the position of the Collector as analogous to that of an arbitrator or jury or, in case of awards of less than £ 50, of a Justice, the English law agrees so far as the award by such person is not enforcible as such ; but it can be enforced by the party by separate action. *R.* vs. *Edwards* (1884)

is taken under section 16, the party entitled to the compensation awarded by the Collector, has,—unless there has been a dispute or other reason for which the money may have been deposited in the Court under sec. 31(2),—his ordinary remedy of enforcing payment from the Collector by suit in the Civil Court.

Evidentiary value of Collector's award.

8. If the Collector's award is contested in a reference under section 18, and evidence is adduced by the objecting claimant, the Collector's award will not *per se* be a sufficient rebuttal, unless supported by evidence of the basis and grounds of the award.[15]

High Court has no jurisdiction to review or revise.

9. The Collector not being a judicial officer or Court, it follows that the Court (Special Land Acquisition Judge) or the High Court has no jurisdiction to review or revise the Collector's award [16].

Award for land outside declaration.

10. Award for any land outside the declaration is ultra vires, and if the Collector takes possession under it, it is trespass: *Harish Chandra* vs. *Secy.* of *State* 11 C. W. N. 875.

Immediate notice—meaning of.

11. "Immediate notice" in sub-sec. (2) means notice within a reasonable time consistent with the usual despatch of official business [17]. The importance of this notice arises for the computation of the period of 6 weeks for filing the application for reference (*vide* sec. 18(2) proviso (b) *post*) when the person was not present

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13 Q.B.D. 586 (at pages 591, 594) C.A.; Re: *Milford Docks Co.* (1883) 23 Ch. D. 292 and other cases cited in Halsbury under Article 100, Vol. 6, Part III; Re: *North London Rail Co. Exparte Cooper* (1865) 84 L. J. (Ch.) 878: *East & West India Docks etc. vs. Gattke* (1851) 3 Mac: & G. 155. As for the promoters they cannot proceed to enforce acquisition on such award if 3 years have been allowed to elapse or any other period specifically fixed in any Special Act for them. Section 123, Lands Clauses Consolidation Act of 1845: *Seymore vs. London & South Western Rail Co.* (1859) 5 Jur. (N. S.) 758.

[15] See notes under section 19 *post*.

[16] *British India Steam Navigation Co. vs. Secy. of State*, 38 Cal. 230, 15 C.W.N. 87. Also, *Ezra vs. Secy. of State*, 30 Cal. 36, 7 C.W.N. 249.

[17] In re: *Sheshamma* 12 Bom. 271.

or represented at the time of the award. Unless, therefore, the notice is delayed by more than 4½ months from the date of the award (a very improbable contingency), a belated notice does not affect the otherwise legal position of the party. A belated notice is thus not necessarily bad and it has been observed by Chandravarkar J. in *Nanu Kothare's* case [18] that the direction for immediate notice is intended for the interests of the public, and to ensure prompt and vigorous action on his (Collector's) part for the speedy determination of all disputes. Nevertheless, it is certainly very helpful to the party if he gets information in writing as to how he has been treated in the award, as is required by the notice provided for in sub-section (2).

Particulars of the notice.

12. It is not stated what particulars are to be supplied in the notice. Forms are prescribed in the Executive Instructions of the Local Governments. These provide for supplying information about the date of the award and such relevant particulars for the person to whom it is addressed as are necessary to inform him how his interest and claims (if any) have been treated in the award [19]. A certain amount of mutuality is implied [20] in the procedure of the Collector, and where the party is not present at the time of the award to know the purport of it, the notice under sub-section (2) is the link.

When notice not required.

13. The notice is not required where the persons are "present personally or by their representatives when the award is made." It follows from the observations in the last paragraph that mere presence is not sufficient; the party must be apprised of the particulars as would be otherwise required in a notice under sub-section (2). Presence of the party at an earlier stage of the proceedings, if he is not present at the time when the

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[18] *In the matter of Government and Nanu Kothare*, 30 Bom. 275 (at pages 282-83).

[19] These particulars may not be necessary when the interest is only for damages *e.g.* a shop-keeper claiming compensation for removal and loss of earning.

[20] *Secy. of State vs. Bhagawan Prosad*, 1929 A.I.R. All. 769 (at page 772).

award is finally made, does not dispense with the necessity of notice [21].

13. The Collector may, for any cause he thinks fit, from time to time adjourn the enquiry to a day to be fixed by him.

Adjournment of enquiry.

14. For the purpose of enquiries under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure.

Power to summon and enforce attendance of witnesses and production of documents.

See para 5 of the notes under section 11 *ante*.

Processes to appear or produce documents and title deeds are often necessary to clear title either between counter-claimants or as to the competency of the party to alienate (section 31(2) *post*). Witnesses may also be summoned but the Collector has no power to administer oath, and a false statement would not come under section 193 of the Indian Penal Code. But sections 174 and 175 I. P. C. would apply in cases of default : *Ezra vs. Secretary of State*, 30 Cal. 36, confirmed on appeal by the Privy Council, 32 Cal. 605 (P. C.).

15. In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24.

Matters to be considered and neglected.

Sections 23 and 24 *post*, contain the substantive provisions which lay down what matters shall be and what matters shall

[21] *Mahendra Chandra Datta vs. Abhoy Charan Sarma*, 40 I.C. 858 : *L.E.J. Solomon vs. H. C. Stork*, 38 C. W. N. 844, 60 C. L. J. 184, A. I. R. 1934 Cal. 758.

not be taken into consideration in determining the amount of compensation in acquisitions under the Act. These apply equally to the Collector in his enquiry and award as to the Court when dealing with a reference made to it against the Collector's award; the only difference being that while the Court is confined to the evidence judicially adduced in the case before it, the Collector acts on materials informally gathered by him or supplied by the party, the opinion of his surveyor and valuer and the party's expert valuers and his own personal knowledge, vide note para 2 under section 11 *ante*; and further that the Collector's proceedings are mere executive and not judicial.

Taking Possession.

Power to take possession.

16. When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

Possession—when to be taken.

Possession is to be taken *after* the award has been made, the only exception being in cases of urgency as provided for in section 17 *post*. The usual practice is to fix the date of possession in the same notice as is issued under section 12(2) *ante*.

Interest when possession taken before payment or deposit.

If possession is taken before the date of payment or deposit of the amount under section 31(2), the party is entitled to interest at 6 per cent per annum for the intervening period (section 34 *post*).

Irregular possession under colour of title, before acquisition.

2. Where Government took possession of land under a colour of title and then erected buildings thereon, and subsequently notified the land for acquisition and acquired the same under this Act, the rightful owner of the land was not entitled to the value of the buildings erected, but only

to the value of land with interest from the date of the possession[1].

3. Possession may be taken immediately on payment (which includes deposit in the Court) but in case of residential houses, it is usual to allow, where possible without inconvenience, some time between the date of payment and possession. To avoid hardship for example when an established shop or business has to be removed, or when on account of death or illness in a family or on religious grounds, the party wants to stay on,—extended time may be allowed by the Collector. When such accommodation is conceded, it is a relevant matter for consideration by the Court when the party disputes the adequacy of the Collector's award for damages on account of removal or loss of earning. An under-lessee or tenant who is allowed to hold over after the date of payment, is so allowed only by sufferance and is not entitled to a month's notice (as for ordinary ejectment)[2]. Extended time has also to be given for the harvesting of standing crops or vegetables, if no compensation is awarded for them under section 23(1) secondly *post.*

Obstruction to possession.

4. Possession if obstructed, may be enforced through the Magistrate or the police, vide section 47 *post*

Effect of taking possession.

5. When possession is taken of any land by the Collector, it thereupon vests absolutely in the Government free from all encumbrances [3] and all leases and sub-leases come to an end and all easements are

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[1] *Vallabhdas Naranji, Khot* of *Kanjur vs. The Development Officer. Bandra,* (P C.) 50 C.L.J. 45, 33 C.W.N. 785 at 794. The English law as comprised in the maxim "quidquid plantatur solo solo cedit" has no application. Refers to *Thakur Chandra Poramanik vs. Ramdhone Bhattacharjee* 6 W.R. 228 (F.B.) (1866) : *Narayan Bin Raghoji vs. Bholagir Guru Mangir,* 6 Bom. H.C.R. 80 (1869) : *Narayan Das Khettry vs. Jatindra Nath Roy Chowdhury,* L.R. 54 I.A. 218, S.C. 31 C.W.N. 965 (1927).

[2] *Municipal Commissioners for the City of Bombay vs. Damodar Brothers,* 45. Bom. 725, 60 I.C. 571, A.I R. 1921 Bom. 214.

[3] *Collector of 24 Parganas vs. Nobin Chandra Ghosh* (1865), 3 W.R. 27.

discharged[4]. This is the crux of the main difference between an acquisition under the Land Acquisition Act and an acquisition by private purchase. The doctrine of *caveat emptor* does not apply (see notes under sections 3 (b) and 9 *ante*). Any person aggrieved whether by reason of omission or by reason of inadequacy of the Collector's award has his remedy by reference under section 18, but he cannot otherwise proceed against the Collector or Government[5]. Mere irregularities in the service of notice do not necessarily render the award void nor prevent the vesting of the property in Government as contemplated in this section : (see notes under section 9, *ante*)[6]. This principle does not apply where there has been a material non-compliance of the legal requirements, for example where the land is outside the declaration[7] under section 6, or where there has been no determination of the market-value and only a nominal award of one rupee was made[8].

Free from all encumbrances.

6. "Encumbrances" include easement rights of others such as right of air, light, way etc, (which presumably would be compensated for in the award) and customary rights. See notes under sections 3(a), 3 (b) and 9 *ante*. Even when the Collector acquired part

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[4] *Taylor vs. Collector of Purnea* (1887) 14 Cal. 423. Also *In re Fenwick* (1870) 14 W.R. Cr. 72. Also *Mitra vs. Municipal Committee, Lahore*, 89 I.C. 658, 6 Lah. 629, A.I.R. 1925 Lah. 523 : *Bombay Municipality vs. Damodar Bros.* 60 I.C. 571, 45 Bom. 725, A.I.R. 1921 Bom. 214.

[5] *Jogesh Chandra vs. Secy. of State* 29 C.L.J. 53, in which the Calcutta case of *Rameswar vs. Secy of State* 34 Cal. 470, 5 C.L.J. 669, 11 C.W.N. 356, and the Madras case of *Manthuravadi vs. Secy. of State* 27 Mad. 535 are distinguished as referring to circumstances of tortious action justifiable under section 52 *post*.

[6] *Kasturi Pillai vs. Municipal Council, Erode*, 43 Mad. 280, 58. I.C. 646.

[7] *Harish Chandra Neogy vs. Secy. of State* (1907) 11 C.W.N. 875 : *Gajendra Sahu vs. Secy. of State* 8 C.L.J. 89. See notes under section 6 *ante*.

[8] *Luchmiswar Singh vs. Darbhanga Municipality* 17 I.A. 90, 18 Cal. 99. See also *Ponnaia vs. Secy. of State* 1926 A.I.R. Mad. 1099, 97 I.C. 471 : *Managing Committee, George High School vs. Abdul Karim Khan* 157 I.C. 111, A.I.R. 1935 All. 895.

of a public street, the land so acquired would cease to be part of the street and it could no longer be used as such [9].

7. In the case of a mortgage, the mortgagee's lien gets attached to the total compensation awarded for the land, the compensation money being the land itself in another shape. The remedy of the mortgagee is against that money and [10] the mortgagor, but so far as the Collector or Government is concerned the position under section 16 would be unaffected and the mortgagee has no remedy against the Collector or Government[11]. The principle is that the compensation money is held as money impressed with the trusts of real estate [12]. It follows that widow's interest [13] or interest of trustees and shebaits would be governed by the same rule [14].

Nuisance.

8. Vesting of the land free from all encumbrances would not justify the use of the land in a manner which would under the ordinary law, be a nuisance [15]. But nuisance *where it is due to the execution of the purpose for which the land is acquired*, when anticipated, is subject of compensation in the land acquisition proceedings : see notes under clauses thirdly and fourthly of section 23(1) *post.*

Diversion of purpose.

9. Although the land vests free from all encumbrances, it will not justify diversion of purpose by a municipal body when such purpose is not within the statutory powers and obligations of that body [16].

[9] *Municipal Corporation of Bombay vs. G. I. P. Rly.* 41 Bom. 291 (P.C.), 21 C.W.N. 447, 38 I.C. 923, 25 C.L.J. 209, 43 I.A. 310.

[10] *Jatoni Chowdhurani vs. Amar Krishna Saha* 13 C.W.N. 850, 6 C L.J. 745.

[11] *Secy. of State vs. Kupusami Chetty* 1924 A.I.R. Mad. 521, 78 I.C. 82.

[12] *Re : Stewarts' Trust* (1852) 22 L.J. N.S. 369. Sec. 69 Lands Clauses Consolidation Act, 1845.

[13] *Sheoratan Rai vs. Mohri* 21 All. 354 : *Sheo Prosad Singh vs. Jalehar Kunwar* 24 All. 189.

[14] *Kamini Devi vs. Pramatha Nath Mukherji* 39 Cal. 33, 10 I.C. 491.

[15] *Rajmohan Bose vs. E. I. Rly. Co.* (1872) 10 B.L.R. 241.

[16] *Lachmeswar Singh vs. Chairman, Darbhanga Municipality*, 18 Cal. 99, 17 I.A. 90 : *Secy. of State vs. Amulya Charan Banerji*, 104 I.C. 129, 1927 A.I.R. Cal. 874.

Vests in Government.

10. Whatever the source of the fund from which the cost is met (section 6 proviso) the land on taking of possession by the Collector vests first absolutely in the Government. In the case of acquisition for a Company, [17] where the provisions of sections 38 to 42 *post* are applied, Government next transfers the land by a deed of transfer stipulating the terms on which the transfer is made, vide section 41 *post*. See also Form 1A of the deed of transfer in the Bengal Land Acquisition Manual. In the case of acquisition for local authorities there is ordinarily simply making over, and the terms are governed by the limitations in the Acts relating to the constitution, powers and functions of such authorities [18]. Some of these Acts, however, contain specific provisions [19] of "vesting", on payment of the costs of acquisition, but here also the powers derived from such "vesting" are governed by the provisions relating to the constitution, powers and functions of such authorities, in the respective Acts. Several Town Improvement Acts [20] contain a distinct provision,

[17] The provisions of these sections would not be applied where an institution (*e.g.* a school, hospital etc.) which though a Company within the meaning of that term in this Act obtains a partial aid from Government for the cost of the acquisition (*vide* the word "partly" in the proviso to section 6(1) *ante*), and in such case Govt. either grants a license or a lease or an indenture with the agreed terms, after the land has vested in Govt. under section 16.

[18] *Luchmiswar vs. Darbhanga Municipality, ibid.*

[19] See section 476 of the Calcutta Municipal Act of 1923 ; section 98 (3) of the Bengal Municipal Act of 1932 ; section 91 (1) of the City of Bombay Municipal Act of 1888 ; section 67 of the Madras District Municipalities Act of 1920 ; section 74 of the Madras City Municipal Act of 1919 ; section 58 of the Punjab Municipal Act of 1911 ; section 40 of the Central Provinces Municipal Act of 1922 ; section 41 of the Burma Municipal Act of 1898.

[20] Clause (5) of the Schedule to the *Calcutta* Improvement Act of 1911 and section 69 of that Act ; clause 6 of the Schedule to the *United Provinces* Town Improvement Act of 1919 and section 56 of that Act ; Clause 5 of the Schedule to *Burma* (City of Rangoon Improvement) Act of 1920. The power of acquisition of land by applying the provisions of the Land Acquisition Act is given only "for" carrying out any of the purposes of these respective Acts and the land, when acquired, thus vests in them for these purposes only.

as a supplementary section 17A to the Land Acquisition Act, which runs thus :—

"In every case referred to in section 16 or section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Board, and the land shall thereupon vest in the Board subject to the liability of the Board to pay any further costs which may be incurred on account of its acquisition."

Meaning of "possession."

11. "Possession" in the section therefore means full vacant possession, and not possession only of a partial interest, e. g. of the landlord's when there are tenants in occupation, or of some of the tenants and occupants where there are several [21]. When a *tauzi* is sold for arrears of revenue after award and possession of some lands thereunder is taken under the Land Acquisition Act, the auction-purchaser does not purchase the acquired lands at all : but when the award and possession of the Collector take place after revenue-sale, the auction-purchaser is entitled to the compensation money [22].

Special powers in cases of urgency.

17. (*1*) In cases of urgency, whenever the Local Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (*1*), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the government, free from all encumbrances.

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[21] As there is no divesting till such full possession, the rights and liabilities regarding land-revenue, rent, cesses and municipal taxes would, so far as regards the Collector and the parties, thus subsist with the parties up to the date of such full pessession. The position may be different as between a landlord and a tenant *inter se*.

[22] *Nrisinha Charan vs. Nagendrabala* (1932), 60 Cal. 281, 37 C. W. N. 14, A. I. R. 1933 Cal. 522, 144 I. C. 743.

(*2*) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, the Collector may, immediately after publication of the notice mentioned in sub-section (*1*) and with the previous sanction of the Local Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances.

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his moveable property from such building without unnecessary inconvenience.

(*3*) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24 ; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damages shall

be allowed for in awarding compensation for the land under the provisions herein contained.

[(*4*) In the case of any land to which, in the opinion of the Local Government, the provisions of sub-section (*1*) or sub-section (*2*) are applicable, the Local Government may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the publication of the notification under section 4, sub-section (*1*).]

There are two classes of urgent cases specially provided for in this section :—

(1) urgent cases in which taking of possession may wait at least 15 days from the date of the publication of the general notice under section 9(1), and

(2) cases of unforeseen emergency when immediate possession is necessary.

In either case, the issue of a declaration under section 6 is imperative and general notice under section 9(1) must be published ; but the proceeding under section 5A is discarded ; and in either case possession may be taken *before* award. In cases of class (1) possession must wait till 15 days from the publication of the general notice under section 9(1), but in cases of class (2) this is not necessary, and possession may be taken immediately on the publication of such notice. The usual proceedings for award and payment of compensation follow next ; but under section 34 *post*, the parties are entitled to interest at 6 per cent per annum for the period between the date of taking possession and payment or deposit under section 31(2).

2. Although the final award may be delayed, sub-section (3) provides for immediate payment (at the time of taking possession) of compensation for (i) standing crops, (ii) trees, and (iii) any other damages sustained by such dispossession and not

excepted in section 24. If the Collector's offer be not accepted, it should wait till final award and the party feeling aggrieved may then have his remedy in the usual course under section 18. Other damages referred to in sub-section (3) above would ordinarily cover damages under clauses fifthly and sixthly of section 23(1) *post.*

Damage-suit lies—if Collector refuses award.

3. When the Collector refuses to make an award on the ground that the land belongs to Government, the party aggrieved may bring a suit for damages, but not for declaring the acquisition void nor for restitution of possession [1], and the cause of action arises from the date of dispossession and not from the date of the Collector's refusal [2]. The period of limitation is 6 years under article 120 of Schedule II of the Limitation Act IX of 1908 and not one year only as in article 18 [3].

Unhealthy sites.

4. The provisions of section 17 have been made applicable to urgent cases for clearing unhealthy sites, certified by the Magistrate, by clause 4 of the Schedule of the Calcutta Improvement Act V of 1911; also clause 5(4) of the United Provinces Town Improvement Act of 1919.

Urgent cases of Railway accidents.

5. Urgent cases of a Railway, when there is a slip or other accident happening or apprehended, are specially provided for in sections 9 and 10 of the Indian Railways Act IX of 1890. A Railway Administration may, on such emergency, under authorisation from the Governor-General in Council, enter upon land, and pay directly to the party compensation for damages caused. If they cannot so settle, the Collector will, on application, determine the compensation, and sections 11 to 15, 18 to 34, and 51 to 54 of the Land Acquisition Act will thereafter apply, but no declaration under sec. 6 or notification under sec. 4 is necessary.

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[1] *M. Venkaya vs. Secy. of State*, 27 Mad. 536.

[2] *James Hill vs. Magistrate of Nadia*, 11 W.R. 1.

[3] *M. Venkaya vs. Secy. of State* (ibid): *Rameswar Singh vs. Secy. of State*, 34 Cal. 470, 11 C.W.N. 356.

PART III.

Reference to Court and procedure thereon.

Part III of the Act deals with the remedy of a person who is dissatisfied with the award made and filed by the Collector under sections 11 and 12 *ante.* This remedy is—application to the Collector for a reference to the Court (i. e. the Special Court under section 3(d) *ante*),for an adjudication of the matter objected to. Section 18 lays down how and within what time such application shall be made, and section 19 indicates the Collector's procedure in making the reference. Sections 20 to 22 and 25 to 28 explain the jurisdiction of the Special Court and its procedure. Of these, sections 25 to 28 are intended for cases where the total *amounts* of compensation awarded by the Collector (as opposed to *apportionment*) are objected to, and sections 20 to 22 apply both to such cases and to cases of apportionment dispute. Sections 23 and 24 are substantive provisions which lay down what matters the Court shall and what matters it shall not take into consideration in determining the amounts of compensation payable in compulsory acquisition under this Act [1]. The provisions of sections 23 and 24 apply also to the Collector when he determines his award under section 11, *vide* section 15 *ante.*

2. One general principle of interpretation of Statutes, is that where a Special Act provides for a particular line of remedy, no other remedy is permissible to the party [2]. The provisions in Part III of the Act are thus important, in as much as the remedy of a dissatisfied person claiming an interest in the land or in the compensation due from its acquisition, is limited to whatever line of remedy is provided for in this

[1] For a history of the provisions in these two sections and their basis see the "Introduction" *ante.*

[2] See the Introduction *ante.*

Part or in any other Part [3] of this Act, and unless such person follows this line he is without remedy. The general plan of the provisions in this Part is that so far as regards the *total amount* of compensation, the position must be final within the maximum period of six months [4] from the date of the Collector's award, or it must be finally known within this period whether there is any objection regarding this amount for which the award of the Reference Court would have to be awaited (*vide proviso* to section 18(2) *post*). So also as regards the *apportionment* of the total amount amongst the several persons interested, except to this extent that the liability of a person who may have received payment, to a person lawfully entitled thereto, is not affected (*vide* third *proviso* to section 31 (2) *post*). The general position is now well-clarified by judicial decisions noted under the several sections : but the position as regards the jurisdiction of the High Court to interfere where the Collector rejects an application is still unsatisfactory [5]. The several High Courts have differred in their views : and the Calcutta High Court which had hitherto held the view that the High Court has this jurisdiction, has recently been inclined to take the opposite view. If the position be that the High Court has no jurisdiction to interfere when the Collector has irregularly or improperly rejected an application for reference under section 18 or refused to make a reference to the Court which he is required to make under section 30, it is

[3] Section 30 in Part IV provides for reference to Court by the Collector *suo motu*, where he is unable to apportion. In such case the parties, though they have not themselves applied under section 18, may get an adjudication from the Court on the points of dispute in the matter of the apportionment.

The third *proviso* to section 31(2) in Part V *post*, provides for separate action against a party who may have wrongfully taken payment.

Separate action may also lie against the Collector for material irregularities in the proceedings, subject to the provisions of section 52 in Part VIII *post*.

[4] *In the matter of Government and Nanu Kothare*, 30 Bom. 275, per Chandravarkar J.

[5] See notes under section 18 *post*.

obviously necessary that it should be rectified by an early amendment of the Act.

Reference to Court.

18. (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken :

Provided that every such application shall be made,—

(*a*) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award ;

(*b*) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

Any person interested entitled to apply, except—(i) when he has accepted,

Any "person interested" who is dissatisfied with the Collector's award, whether in the matter of his valuation of the land, determination of the amounts of damages or in apportionment, is entitled to apply to the Collector for a reference to the Court (i.e. the Special Court as defined in section 3(d) *ante*) for an adjudication on the matter, *except* when such person has accepted the Collector's award. As to who

are "persons interested" see section 3(b) *ante* and the notes thereunder. See in particular para 5 of those notes : all persons specified therein are persons interested and are entitled to apply for reference under section 18. As to the position of Government, a Company or a local authority on whose behalf land is acquired when the Government or such requiring body had or claimed an interest in the land and it was disputed, see paras 7, 8 and 9 of the notes under section 3(b) *ante*.

or (ii) received payment without protest.

2. Besides cases of positive acceptance which are excepted by sub-section (1), cases where a person has received the amount awarded by the Collector "otherwise than under protest", are also excepted by the second proviso to section 31(2) *post*.

3. Acceptance may be :—

(*i*) for the *total amount* awarded as the market-value of the land, or for the *total amount* of damages awarded for any or all of the several heads in clauses secondly to sixthly of section 23(1) *post* :

or (*ii*) for a specified *ratio* of such total amount or a certain specified amount out of such total amount.

Effect of acceptance when other parties obtain reference.

In case of class (i) where there are several persons claiming such total amount it is open to the non-accepting claimant to object as to the adequacy of the total amount and apply for reference : but if he does not so apply within the specified time as in the proviso to this section, his remedy is barred, so far as regards the Collector and the total amount awarded by him. So, a mortgagee cannot sue the Crown for his mortgage-money [6] though he may have a right of action against the mortgagor under the third proviso to section 31(2) *post* : and as against the Crown his only remedy is to apply under section 18 within the specified time.

4. In cases of class (ii), where the apportionment is on the basis of a ratio on the total amount, and this ratio only is

[6] *Secy. of State vs. Kuppuswami Chetti*, 1924 A. I. R. Mad. 521, 78 I.C. 82.

accepted but not the total amount, there would of course be no bar to a reference as to this total amount. But if only one of the parties applies for reference as to the amount alone (and not the ratio), and the other does not, the latter cannot have the benefit of any increase in the total amount which the Court may adjudicate in the reference made by the former [7]. But the referring claimant cannot get the whole of the enhancement but only his share of the enhancement. As has been observed in *Prag Narain's* case—"There can, therefore, be no foundation for the appellant's claim to be entitled to the extra amount which the tenants (who did not make any reference) might have received if they had not by agreement accepted three-quarters of a lower valuation. All that the Appellant can claim is his awarded proportion of Rs. 20 per square yard. The gain is a gain of the Municipality which acquired the land * * *."

Receiving payment without protest-effect of.

5. Receiving payment otherwise than under protest is tantamount to acceptance: but this does not affect the liability of the person receiving the payment, to pay the same, whether in whole or part, to the person lawfully entitled thereto, *vide* third *proviso* to section 31(2) *post.*

Acceptance or protest how signified.

6. Acceptance is usually signified by an endorsement by the party or his authorised agent on the body of the claim-statement filed under section 9 *ante*, or by separate petition. When payment is received "under protest" this is usually signified by an endorsement to this effect on the counterfoil of the cheque or other record on which the receipt of the payment is acknowledged, or by a prompt petition stating that the payment was received under protest. Otherwise it may not be presumed

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[7] *Prag Narain vs. Collector of Agra* (1932) (P.C.), 59 I.A. 155, 54 All. 286, 36 C.W.N. 579, 55 C.L.J. 318, 1932 A.I.R. (P.C.) 102, 136 I. C. 449, following *Rohan Lal vs. Collector of Etah*, 51 All. 765, A.I.R. 1929 All. 525. Also *Sasikanta Acharji vs. Abdur Rahman Sarkar*, 38 C.L.J. 265, 75 I. C. 208, A.I.R. 1924 Cal. 158 : *Collector of Dacca vs. Golam Ajam Chowdhury*, 40 C. W. N. 1148, A.I.R. 1936 Cal. 688.

that the payment was received "under protest." Receiving of payment under protest as to the sufficiency of the amount does not bar an application by the receiving party for reference under this section, if made within time, because proviso to sec. 31(2) *post*, debars him only when he has received payment otherwise than under protest. Far less is it any bar to another party; and the mere fact that the compensation money has been paid out to some party, does not invalidate a reference or oust the jurisdiction of the Court to entertain a reference duly made on the application of another party, and the Court has inherent power to recall the money improperly paid out [8]. It is immaterial in such case whether the payment was received under protest or not: for, the manner of acceptance of payment by one party cannot prejudice another.

Receiving payment under protest is no bar to reference.

Payment to one party no bar to reference by another.

7. An application for reference under this section shall be made to the Collector and in writing [9], and it shall state the ground on which objection is taken to the Collector's award, *vide*, sub-section (2). The grounds on which an application for reference can be made are specified in sub-section (1), viz :—

On what grounds reference can be applied for.

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[8] *Jogesh Chandra Rai vs. Yakub Ali* (1912), 17 C. W. N. 1057, 21 I. C. 111 : *Rahmit vs. Mahadeo*, A. I. R. 1920 Pat. 129, 56 I. C. 125, 1 P. L. T. 148. The third *proviso* to section 31(2) imposes the liability of the person who has received the payment : and this liability can be enforced either by a reference under section 18 (if applied for in time) or by separate action : see notes under that *proviso* post.

[9] The court-fee payable on an application is eight annas as for an application to the Collector in cases not otherwise provided for, according to Schedule I article (b) of the Court Fees Act VII of 1870, subject to any variation made by the Provincial Legislatures. It is not to be calculated advalorem for the value of the subject-matter whether it is for the valuation made by the Collector, or for the adjudication of a dispute *inter se* the several claimants, although such adjudication may involve decision of a question of title.

(a) Measurement (i. e. the area) of the land :

(b) Adequacy of the amount of the compensation awarded by the Collector under whichever of the several heads of compensation as specified in clauses first to seventhly of section 23 (1) *post* :

(c) The persons to whom it is payable :

and (d) Apportionment of such amount amongst the several persons interested.

References on grounds (a) and (b) are usually called "valuation references" and these cases are against the Government. References on grounds (c) and (d) are usually called "apportionment references" in which the issues are as regards title to receive payment or distribution of the compensation-money amongst the parties *inter se*. There may, however, be mixed cases in which valuation as well as title or distribution may be in dispute.

Scope of reference—strictly limited.

8. The scope of a reference is strictly limited to the above matters [10], and to the persons affected by the objection taken on these grounds : and so also the jurisdiction [11] of the Court to which the reference is submitted, *vide* section 21 *post*. An application for reference can thus be made only on the grounds mentioned in the section : and it should be stated specifically in the application which of these grounds is taken. Where an objection has been taken under one of the headings mentioned above, it is not open to the claimant to attack the award upon an objection falling under some other heading. Where objection to measurement was not stated as a ground in the application for reference, this objection can-

Grounds to be stated—effect of omission.

[10] *Secy. of State vs. Fakir Md. Mandal*, 101 I. C. 349, 45 C. L. J. 185, A. I. R. 1927 Cal. 415 : *Pramatha Nath Mullick vs. Secy. of State*, 57 I. A. 100, 34 C. W. N. 289, 51 C. L. J. 154, 57 Cal. 1148, 121 I. C. 586, A. I. R. 1930 (P.C.) 64 : *Revenue Divisional Officer, Vijagapatam vs. Zemindar. of Chevudu*, A.I.R. 1937 Mad. 902 : *C. R. M. A. Firm vs. Spl. Collector of Pegu*, 8 Rang. 364 : *Anwar Ali vs. Ram Sarup*, 24 I.C. 903, 180 P.L.R. 1914.

[11] *Abu Bakar vs. Peary Mohan Mukherjee*. (1907), 34 Cal. 451.

not be taken before the Reference Court [12]. In a Madras case [13] it has been held that a fresh case cannot be made before the Reference Court by way of supplementary claims or a claim under a new item, such as compensation for the cost of constructing a new wall not previously stated. Where no objection was taken regarding apportionment, but objection was taken only to the valuation, the claimant could not raise the question of apportionment such as the ratio of the division of the amount between him and others : he was entitled only to the same ratio of the enhancement obtained from the Reference Court and not to the whole enhancement, *vide* footnote (7). Nor is it open to any party who did not apply for reference, to enlarge the scope of the enquiry before the Court by introducing matters not covered by the application and referred to by the Collector [14].

Statement of grounds need not be in detail—

9. But statement of "grounds" is not to be confused with "reasons", and details are not necessary nor required by the section[15]. It is not necessary that the ground why the applicant thinks that the Collector's award is inadequate should be stated in detail, but it is sufficient if he has claimed a higher amount[16] : or if he has stated "I will not receive the amount but will contest the matter in the District Court"[17]. The requirements of section 18 must, however, be substantially complied with, and when a person sent a letter stating that the compensation awarded was inadequate, and that unless the property was released or proper compensation paid he would

—but substantial compliance necessary.

[12] *Pramatha Nath Mullick vs. Secy. of State*, (P.C.) ibid.

[13] *Secy. of State vs. Subramania Ayyar*, 127 I. C. 298, A. I. R. 1930 Mad. 576. But see also in re : *L. A. Act and Rustomji Jijibhai* (1905), 30 Bom. 341.

[14] *Abu Bakar vs. Peary Mohan*, ibid : *Gobinda Knmar Roy vs. Debendra* (1907), 12 C.W.N. 98, see also notes under section 21 *post.*

[15] *Mahananda Pal & Ors. vs. Secy. of State* (1919), 24 C. W. N. 716, 58 I. C. 631, differing from *In the matter of Government and Nanu Kothare* (1905), 30 Bom. 275.

[16] *Mahananda Pal & Ors. vs. Secy. of State*, ibid : *Secy. of State vs. Jiwan Buksh*, 36 I. C. 213, 67 P. R. 1916.

[17] *Maddur Krishnam-mal vs. Collector of Coimbatore*, 99 I.C. 269, 1927 A.I.R. Mad. 282.

have the acquisition declared void in a Civil Court, it was held[18] that this did not amount to an application for reference.

Date of Collector's award—meaning of.

10. The *date* of Collector's award is important both for proviso (a) as well as for the second part of proviso (b). Is it the date when the Collector "makes" his award under section 11, or is it the date when such award is "filed" under sec. 12 (1) ? The question was discussed in an Allahabad case[19] of 1929, but the two learned Judges differed in their opinion. Mukherji J. held that "the Legislature meant the date of the *filing* of the award to be the date contemplated by clause (b) of section 18 (2)" : but Niamatulla J. was unable to agree to this view. In a later case[20] the Calcutta High Court has held that according to the terms of section 11 an award cannot be made under that section until it has been properly drawn up with particulars of apportionment etc. and signed by the Collector. In this view, the matter would seem to be of little practical importance, as occasions for a difference of time between an award under section 11 and its filing under section 12 would be rare : for, the Collector would usually "file" the award with the record at the same time that he signs it on its completion with all details.

Presence at the time of award—meaning and effect of.

12. Presence of the party at the time the Collector makes his award, entails the same reduced period of 6 weeks as notice under section 12(2) : in other words it is taken as equivalent to such notice. The substantial part of this notice is information as to how the party has been treated by the Collector and what amount has been awarded for him. Presence at the time of the award implies that the party present *is apprised of this informa-*

[18] *Samuel Burge vs. Improvement Trust, Lucknow,* 78 I.C. 127, A.I.R. 1924 Oudh. 127.

[19] *Secy. of State vs. Bhagwan Prasad,* A.I.R. 1929 All. 769 : refers to *Kuberbai Sorabji Manekji vs. Asstt. Collector, Surat* (1920), 22 Bom. L. R. 1186, 59 I.C. 429.

[20] *L. E. J. Solomon vs. H. C. Stork* (1934), 38 C. W. N. 844, A. I. R. 1934 Cal. 758.

tion, by the Collector at that time. "A certain amount of mutuality is implied in the act of awarding compensation" and the reduced period of 6 weeks would operate against the party who is present, only "when the amount of compensation *is declared* to him[21]." A mere order recorded by the Collector that the party should go to the Civil Court, the muktear representing, thereafter ceasing to appear, does not disentitle the party from the longer period of 6 months[22]. Presence of appearance at an earlier stage is not sufficient either to dispense with the notice or to put the party under the disability of the shorter period[23].

General plan of limitation in the section—maximum period 6 months :

13. The general plan of the section is that when the party is present or is represented at the time the Collector makes his award, the period allowed is 6 weeks from that time. In *other cases* i.e. where the party is not so present, "the maximum period allowed is 6 months from the date of the award. This maximum period is liable to be cut short if there is a service of notice by the Collector"[24]. This follows from the expression "whatever period shall first expire" in proviso (b), and the maximum period of 6 months from the date of the award would not be extended by a belated notice[25] under section 12(2).

—not affected by belated notice under sec. 12(2).

Applicability of Limitation Act.

14. The application of sections 4, 9 to 18 and 22 of the Indian Limitation Act, is qualified by the condition—"only in so far as and to the extent to which they are not expressly excluded by such special or local law" (vide section 29(2) (a) of that Act). This

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21 *Secy. of State vs. Bhagawan Prasad*, A.I.R. 1929 All. 769 (at 772).

22 *Mahendra Chandra Datta vs. Abhoy Charan Sarma*, 40 I.C. 855.

23 *Mahendra Charan Dutta ibid* (b) : *L.E.J. Solomon vs. H.C. Stork* (1934), 38 C.W.N. 844.

24 *Secy. of State vs. Bhagawan Prasad*. A. I. R. 1929 All. 769 (at 770, 774). See also in Re : *Govt. and Nanu Kothare* (1905), 30 Bom. 275, in which—the date of the award was 19th Sept. 1904, the date of service of notice 24th Sept. 1904, and the date of application 9th Nov. *Held that* the application was time-barred.

25 *In the matter of the Govt. and Nanu Kothare ibid*, at page 282.

expression was substituted by the amending Act X of 1922 in place of the previous provision—"unless they were expressly included." Prior to 1922, the High Courts of Calcutta and Madras had held[26] that these provisions of the Limitation Act did not apply to Land Acquisition proceedings. A Division Bench of the Bombay High Court, however, held in 1884, that these provisions of the Limitation Act applied[27]. In a later case[28] of the same High Court, Chandravarkar J. held that even if section 12 of the Limitation Act applied, the time taken for obtaining copies could not be excluded, observing—"the Land Acquisition Act mentions no such thing as a *judgment* of the Collector."

Time taken for copies—not excluded.

Subsequent to the amendment of 1922, the Allahabad High Court[29] (following a previous case of the Lahore High Court) has held, with reference to section 12 of the Limitation Act, that sec. 29 of that Act does not govern an application under sec. 18 of the Land Acquisition Act, observing that sec. 12 "refers to an application for leave to appeal and, an application for review of judgment and to no other application." Consequently the time taken to obtain copies could not be excluded.

When last day is a holiday.

If would seem that under section 4 of the Indian Limitation Act IX of 1908, when the last date for filing a reference petition is a holiday, the party may file it on the reopening day.

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26 *Veeramma vs. Abbiah* (1893), 18 Mad. 99 : *Nogendra vs. Mathura* (1891), 18 Cal. 868 : *Girija Nath vs. Patani* (1889), 17 Cal. 263.

27 *Gurucharya vs. President, Belgaon Town Municipality* (1884) 8 Bom. 529.

28 *In the matter of* Govt. *and Nanu Kothare* (1905) 30 Bom. 275, 7 Bom. L. R. 697.

29 *Kashi Prasad vs. Notified Area, Mahoba*, A. I. R. 1932 All. 598, 54 All. 282, 143 I. C. 111 : *Nafisuddin vs. Secy. of State*, A. I. R. 1927 Lah. 858, 9 Lah. 244, 104 I. C. 397. A different view was held in *H. N. Burjorjee vs. Special Collector, Rangoon*, A. I. R. 1926 Rang. 135, 96 I. C. 110.

15. The grounds on which the Collector may refuse to make a reference are, to follow the provisions in the section, mainly these :—

Grounds on which the Collector may reject an application for reference.

(i) That the applicant is not a "person interested" within the meaning of sec. 3 (b) *ante* :

(ii) That he has either accepted the award on the point on which objection is taken [sub-sec. (1)], or has received payment of such award otherwise than under protest (second proviso to section 31 (2) *post*) :

(iii) That the application is barred by time (*vide* proviso to this section).

The Collector has to decide on these three questions in each case. The principles which have to be followed in the decision, have been stated in the previous paragraphs.

16. The jurisdiction of the Reference Court is a restricted one : and it *arises* only when there has been a referance by the Collector (see notes under section 3 (d) *ante*) : and the scope of its enquiry is also restricted, *vide* section 21 *post.* It is not an Appellate Court, but an Original Court whose function begins when a reference has come up to it : and it is now settled law that the Reference Court connot entertain any appeal or revision against the Collector's order rejecting an application for reference.

Remedy if the Collector improperly rejects an application.

Reference Court has no jurisdiction.

17. There has been divergence of judicial opinion on the question whether the High Court has jurisdiction to interfere with an order of the Collector rejecting an application for reference under section 18 of the Act. The Calcutta High Court had, till lately, consistently held the view that—whether under section 107 of the old Govt. of India Act (since repealed by the Act of 1935) or under section 115 of the Civil Procedure Code,—the High Court had this jurisdiction. "To hold otherwise", it was

Jurisdiction of the High Court.

observed,[30]—"would be to give finality to an award under section 11 even in cases in which the Collector acts irregularly and contrary to law and then refuses on insufficient grounds to make a reference under Part III of the Act." The party aggrieved would then be virtually left without a remedy. An application under sec 18 was really the "plaint" of the judicial proceeding which would follow when it comes up to the Reference Court, and the Collector when dealing with such an application acts "judicially", and amongst the matters which he has to determine would be—"whether the person making the application was represented or not when the award was made, or whether the notice had been served upon the applicant under sec. 12 (2) and what period of limitation applies and whether the application is under the circumstances made within time." Questions whether the provisions of the Limitation Act applied, or whether acceptance of payment was or was not "without protest" (2nd proviso to section 31 (2) *post*)—might also arise.

18. The same view was taken by the Patna High Court [31] : so also by the Oudh Chief Court [32]. The Madras High Court in a Full Bench case (1924)[33] however, took the opposite view and held that although the Collector's functions under section 19 were judicial, and even if he was then a "Court", he was not a Court subordinate to the High Court and section 115 of the Civil

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[30] *Administrator-General of Bengal vs. L. A. Collector* (1905), 12 C W. N. 241. See also *Krishnadas Ray vs. L. A. Collector of Pabna* (1911), 13 I. C. 470, 16 C. W. N. 827 in which the court observed—"It would obviously be unjust that the Deputy Collector should refuse to obey the provisions of the Act, and to provide no remedy for the correction of his mistaken action. Where the law gives a right to a party to a certain procedure, it must also be deemed to give a remedy for the rectification of any irregularities committed in that connection."

[31] *Saraswati Pattack vs. L. A. Dy. Collector, Champaran*, 2 P.L.J. 201, 39 I. C. 650.

[32] *Haridas Pal vs. Municipal Boards, Lucknow*, 22 I. C. 652,

[33] *Abdul Sattar vs. Spl. Dy. Collector, Vizagapattam*, A.I.R. 1924 Mad. 442, 84 I. C. 616, 47 Mad. 357, also *Best & Co. Ltd. vs. Dy Collector, Madras* (1916), 36 I. C. 621.

Procedure Code did not apply. The same view has been held by the Bombay High Court which, realising the undesirable position, invited the Government to rectify it by legislation or otherwise[34]. So also the Allahabad High Court in a Special Bench case [35] in 1932 In a case [36] of 1930, the Lahore High Court has taken the Bombay and Madras view rejecting the Calcutta view referred to above The Burma Chief Court in an earlier (1926) case [37] also took the Madras view, suggesting, however, that there was a remedy to the aggrieved party under section 45 of the Specific Relief Act I of 1887, where that section applied.

19. The whole position came under review before the Calcutta High Court in three recent cases [38]. In *Solomon's* case (May, 1934), it was observed that the Land Acquisition Collector was not a Court within the meaning of section 115 of the Civil Procedure Code nor did section 107 of the Government of India Act (as it was then) apply : but as there was no other remedy left to the aggrieved party (section 45 of the Specific Relief Act not applying in the case), their Lordships held that the High Court had power to revise the Collector's order. The anomaly of this reasoning was noticed in *Bhagaban Das Shah's* case (July, 1937) and later in *Gopinath Shah's* case (November, 1937) in which there was a comprehensive review by Nasim Ali J. In this last case the view that the High Court has no power to interfere under section 115

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[34] *Balkrishna Daji Gupte vs. Collector, Bombay Suburban*, A. I. R. 1928 Bom. 290, 78 I. C. 354, 47 Bom. 699.

[35] *Kashi Pershad vs. Notified Area of Mohaba*, A.I.R. 1932. All. 598, 143 I. C. 111, 54 All. 282.

[36] *Mustaq Ali vs. Secy. of State*, A. I. R. 1930. Lah. 242, 127 I. C. 711 : also *Rafiuddin vs. Secy. of State* (1915), 31 I. C. 76, 65 P. R. 1915 *contra* :—*Secy. of State vs. Jivan Buksh* (1916), 36 I. C. 218, 67 P. R. 1916.

[37] *Burjorjee vs. Spl. Collector of Rangoon*, A. I. R. 1926. Rang. 185, 96 I. C. 110.

[38] *Solomon L. E. J. vs. H. C. Stork*, A. I. R. 1934. Cal. 758, 38 C. W. N. 844, 60 C. L. J. 184 : *Bhagabandas Shah vs. First L. A. Collector*, A. I. R. 1937 Cal. 705, 41 C. W. N. 1301 : *Gopinath Shah vs. First L. A. Collector*, 41 C. W. N. 212.

of the Civil Procedure Code with an order of the Collector under section 18 of the Land Acquisition Act, was fully endorsed. His Lordship, however, did not express any opinion on the view taken in *Solomon's* case that the High Court could interfere where there was no other remedy left to the party : but distinguished the case before it as one in which section 45 of the Specific Relief Act applied and provided a remedy. Their Lordships, therefore, refused to interfere in revision and discharged the rule.

20. The position according to these recent decisions of the Calcutta High Court is, therefore, thus :—

Section 115 of the Civil Procedure Code does not apply, and where other remedy is available (e. g. in Presidency Towns where section 45 of the Specific Relief Act applies) the High Court will not interfere : but where no such other remedy is available the High Court may interfere on the merits of the particular case. This is rather anomalous, for, the assumption of jurisdiction merely on the ground that no other remedy is provided for the aggrieved party, although the Civil Procedure Code or the Government of India Act does not give such jurisdiction, is questionable. Yet it is a serious position that an aggrieved party in such a case should be without a remedy.

Collector making a time-barred reference—effect of

21. If upon a belated application under sec. 18 the Collector makes a reference, has the Reference Court jurisdiction to entertain such a reference ? In *Nanu Kothare's* case [39] it was observed by Chandravarkar J.—"the conditions prescribed by section 18 of the Act are the conditions to which the power of the Collector to make the reference is subject, and these conditions must be fulfilled before the Court can have jurisdiction to entertain the reference." In this view, it seems that even if the Collector wrongly makes a reference upon an application which is time-barred, the Court will not proceed to determine the objections as embodied in the reference. A contrary view was, however, taken by the Allahabad High

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[39] *In the matter of L. A. Act and Nanu Kathare*, (1905) 30 Bom. 275.

Court in a later case[40], where their Lordships observed—"After a reference has been made under the Land Acquisition Act, it is not open to the Collector or the Secretary of State to say that the reference was wrongly made, although the ground for saying so may be that the application by the owner was belated, i. e. in contravention of section 18 (2). The Court does not sit on appeal over the Collector and the Act does not give any authority to the Court either in express terms or by implication to go behind the reference and to see whether the Collector acted rightly or wrongly. It is the province of the Collector alone to decide for himself whether he should make the reference or refuse to do so." So also it has been held that when the Collector has included certain persons (reversioners) in his award, as persons interested (which include persons claiming an interest), and such a person obtains a reference, it is not open for the Secretary of State to question the capacity of such person to have obtained such reference[41].

But the correct view seems to be that the Collector as an agent of Government is not entitled to waive the requirements of law on behalf of Government, so that, when the application for reference did not comply with the provisions of this section being time-barred or otherwise, the Reference Court gets no jurisdiction.[42]

Omission to apply for reference-effect of :

22. Section 18 lays down the only remedy of a person against Government when such person is dissatisfied with the Collector's award. The general principle of law is that when a special statute, such as the Land Acquisition Act, provides for a particular line of remedy, no other remedy is available to the party.

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[40] *Secy. of State vs. Bhagwan Prasad*, A. I. R. 1932 All. 597, 141 I. C. 621, following *Secy. of State vs. Bhagwan Prasad and another*, A. I. R. 1929 All. 769, 124 I. C. 529.

[41] *Chettiamal vs. Collector of Coimbatore*, A. I. R. 1927 Mad. 867, 105 I. C. 219.

[42] *Sukhbir Singh vs. Secy. of State*, A. I. R. 1926 All. 766, 97 I. C. 566, 49 All. 212 : *Ghulam Muhyuddin vs. Secy. of State*, 24 I. C. 879, 208 P.L.R. 1914 : *Samuel Burge vs. The Improvement Trust, Lucknow*, A. I. R. 1924 Oudh 127.

The plan also of the Land Acquisition Act is that the Collector's proceedings should be final on the lapse of the period of limitation laid down in the *proviso* to this section, subject only to later adjudication of the Reference Court on any reference that may have been applied for within this period. The Government and the requiring department, local authority or company are concerned with the total amount of compensation awarded by the Collector ; and so far as this is concerned, unless objection has been taken by an application for reference under this section, it is final and conclusive and no separate suit lies in this respect[43].

No separate suit lies against Govt.

A separate suit may lie against the Government when the validity of the acquisition itself is questioned on the ground of material irregularities[44].

Exception

23. The observations made in the last paragraph apply equally to persons whether they have appeared or not before the Collector or whether their names were included in the Collector's proceedings or not. For persons who were not brought in the Collector's proceedings, an extended period of six months from the date of the award is provided for in the section ; and after that period he has no other remedy against the Collector.

Above apply equally to persons appearing or not included in Collector's proceedings.

24. As for the distribution (i. e. apportionment) of the total amount, amongst the several persons interested in it, the remedy *inter se* such persons is also restricted to the procedure of a reference to the Court under this Act, on the same principle

Apply equally also to apportionment *inter se* the persons interested :

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43 *Saibesh Chandra Sarkar vs. Sir Bejoy Chand*, 26 C. W. N. 506, 65 I. C. 711, A. I. R 1922 Cal. 4 : *Bhandi Singh vs Ramadhin Roy*, 10 C. W. N. 991, 2 C. L. J. 859 : *Amolak Shah vs. Charandas*, 17 I. C. 684, 14 P. L. R. 1912 : *Jogesh Chandra Roy vs. Secy. of State*, 48 I. C. 702, 29 C. L. J. 58. See also *Stevens vs. Jeacocke*, 11 Q. B. 781 : *West vs. Downman, L. R.* 14 Ch. Div. 111 : *Rama Chandra vs. Secy. of State*, 12 Mad. 105 : *Raja Nilmoni Singh Deo vs. Ram Bandhu Rai* (P C), 7 Cal 388.

44 *Rameswar Singh vs. Secy. of State* (P. C.), 34 Cal. 470, 11 C. W. N. 356, 5 C. L. J. 669 : *Luchmeswar Singh vs. Chairman, Darbhanga Municipality*, 17 I. A. 90, 18 Cal. 99.

that when a special line of remedy is provided for in a special statute, the party must follow that line of remedy, and no other line of remedy, such as separate suit, is available to him[45]. It is, however, open to the parties to vary the Collector's apportionment by agreement under section 29 *post.* Otherwise, the Collector would wait for the period of limitation laid down in the *proviso,* and then make payment to the several persons according to his apportionment. The 3rd *proviso* to section 31 (2) *post,* however, allows separate action against a party who may thus receive payment, by a person who deems himself entitled to the money received by such party ; but it has been held that where the person was present at the time of the award or received notice of award under section 12(2) *ante.* he cannot maintain such separate action ; his only remedy is to apply for a reference within six weeks as laid down in the proviso to section 18. See also notes under the 3rd proviso to section 31 (2) *post.*

but they can vary Collectors apportionment by agreement amongst themselves.

where separate action lies against a wrong person receiving payment.

25. Where the Collector has not been able to apportion the total award or any portion of it amongst the persons interested in it, and has made a joint award, *any or all* of the claimants may apply for a reference under this section ; otherwise the Collector would send the money to the Court with a reference made under section 30 *post.* See notes under that section.

Reference under Section 30.

Collector's statement to the Court.

19. (*1*) In making the reference, the Collector shall state for the information of the Court, in writing under his hand,

(*a*) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon ;

Foot (45) ibid.

(b) the names of the persons whom he has reasons to think interested in such land ;

(c) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11 ; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.

Object of the particulars to be stated by the Collector.

The particulars to be furnished by the Collector in and with his "reference", should be such as would be necessary for the Court for issuing notices under section 20 and for its enquiry under section 21 *post*. The scope of the Court's enquiry is restricted to the consideration of interests which are affected by the objection, that is the particular ground or grounds taken by the applicant, *vide* section 18 (1) and (2) *ante*. While it is unnecessary to encumber the reference with superfluous particulars [1], care has to be taken that all particulars as would be necessary for the enquiry under section 21 *post* are furnished, in particular that the names of all persons whose interests are affected by the objection are stated.

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[1] The Collector's award is a long document often containing names and particulars of matters quite unconnected with each other : e. g. where several shop-keepers in a premises ask for damages for removal etc. Inclusion of superfluous matters would not only confuse the record but may lead to unnecessary harassment to other persons who are not concerned, if they get included in the list of notices under section 20(b) *post*.

Area, structures, trees and crops.

2. *Clause* (*a*) : Particulars of the area of the land, the buildings and other structures on it and also of trees—would be necessary when the objection is about the valuation of the land [clause first, section 23(1) *post*], and particulars of crops would be necessary when the objection is with regard to the damage awarded for standing crops [*vide* clause *secondly* of section 23 (1) *post*]. Except the area of the land and, in some cases, its classification, the other particulars are not stated in the Collector's award (see section 11 *ante*) : and these other particulars have therefore to be furnished from what have been ascertained by the Collector during his enquiry. These are statements of facts and would be presumed by the Court as correct without further proof, unless the objector adduces evidence to the contrary in which case further evidence may be necessary in support of the Collector's statement.

Names of persons interested.

3. *Clause* (*b*) : Compare section 9 (3) *ante* which requires the Collector to issue special notice to all persons "known or believed to be interested" : and section 11 (iii) *ante* which requires the Collector to apportion among "all the persons known or believed to be interested". See also section 20 (b) *post* which requires the Court to issue notices to "all persons interested in the objection" and to section 21 *post* which requires the Court to consider "the interests of the persons affected by the objection", that is, the particular ground or grounds taken by the applicant under section 18(1),—(see para 1 above). It is necessary that the names of all persons whom "the Collector has reason to think interested" in the matter of the objection[2] should be stated, whether such person has appeared before him or made claim or not. The expression "except such (if any) of them as have consented without protest to receive payment" used in section 20 (b) *post* is not used in clause (b) of this section. The

[2] The expression "interested in such land" includes interested in any compensation such as for damages under clauses secondly to sixthly of section 23(1) *post* : vide definition section 3(b) *ante* and notes thereunder.

Collector should include their names also, but will note the fact that such persons have received payment without protest. To enable the Court to issue notices as required by sec. 20 (b) *post*, the Collector should also state the addresses of these persons, so far known to him.

Omission of name by Collector-effect of.

It follows that the omission by the Collector of the name of any person whose interest is affected by the objection taken by the applicant in the reference, or whose presence is necessary for the proper adjudication of the matter, would not debar any such person to be joined or added as a party, although such person cannot raise any new objection and enlarge the scope of the Court's enquiry. See notes under sections 20, 21 and 53 *post*.

4. *Clause* (*c*) : The object of the reference to section 5 is not clear, for, the damage awarded there is final. The reference to section 17 is relevant for the purpose of sub-section (3) of that section *ante*.

Failure to state grounds minimises the presumtive value of the award.

5. *Clause* (*d*) : The Collector's award (section 11) does not require statement of grounds, but when there is a reference against the amount of compensation determined under any of the heads on which compensation is payable, the Collector has to state his grounds[3]. Failure to do this minimises the presumptive value of the Collector's award and lightens the burden of proof on the objectors[4]. While on the one hand it follows that however light the burden, if the claimant

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[3] *Harish Chandra Neogy vs. Secy. of State* (1907), 11 C. W. N. 875, in which it was observed that it was incumbent on the Collector to state the grounds of his award or the Secy. of State to justify the amount awarded.

[4] *Fink vs. Secy. of State* (1907), 34 Cal. 599, in which it was held that without such statement of grounds, the Collector's award becomes a mere *ipsi dixit* and has very little weight. Same view had been expressed in the earlier case of *Madhusudan Das vs, The Collector of Cuttack*, 6 C. W. N. 406, in which it was further observed that the statement of grounds was a safeguard against arbitrary award being made. See also *Marwadi Padamji vs. Deputy Collector, Adoni*, 24 I. C. 141.

does not adduce *any* evidence, from his position as plaintiff the result would be that the Collector's award would get automatically confirmed, on the other hand if the Collector does not state his grounds very little evidence would be necessary on the other side to counterbalance whatever the presumptive value of the Collector's award may be under such circumstance. It is, however, open to the Secretary of State to adduce evidence to justify the Collector's award, and in *Madhusudan Das* (ibid) the case was remanded by the High Court to enable *both* parties to adduce evidence of the true value of the land ; that is to say, both for the Secretary of State to justify the Collector's award and for the claimant to support his claim. This also follows from the observation about justifying the award before the Special Judge in *Harish Chandra Neogy's* case (ibid).

6. But to analyse the position :—The Collector's statement of grounds may comprise—(i) facts including materials and *data* relied upon or considered by him, and (ii) reasons and opinion. His statement of facts would include "particulars of any trees, buildings or standing crops", vide clause (a), rents of the land or the premises acquired, or of other neighbouring lands or premises, and sales and other transactions of the land or neighbouring lands. The proceedings before the Court would be treated as an independent enquiry[5] not of the nature of an appeal as has been held by the High Courts, and a mere statement of these facts and *data* in the Collector's reference will not be evidence without formal proof *unless* assented to by the claimant. The materials thus not being useable without formal proof the opinion of the Collector in the award, would be merely his *ipsi-dixt*, and of no greater weight than the opinion of an expert unsupported by materials. The net result is that whether the Collector states his grounds in detail or not, the Reference Court has to decide on the balance of evidence adduced

but mentioning of grounds does not relieve formal proof of facts regarding them.

[5] *Macintyre vs. Secy. of State*, 2 L. B. R. 208 : *Raja Bommadevara vs. Subbarayadu* (1911), 36 Mad. 895 : *C. R. M. A. Firm vs. Special Collector*, A. I. R. 1930 Rang. 346, 127 I. C. 783, 8 Rang. 864.

by the applicant on the one side and on behalf of the Secretary of State on the other[6].

Secretary of State not restricted to the grounds stated by the Collector.

7. Whatever the grounds stated by the Collector with his reference, the case for Government before the Reference Court is not necessarily limited to these grounds. It is only the "amount" of the award which binds (*vide* section 12 (1)), and it is open to Government to introduce new grounds (or even ignore the grounds stated by the Collector) in justification of the amount of the award.

Notices under section 12(2) and 9 and not section 4, are relevant.

8. *Sub-section (2) : Particulars of notices :*—It is not clear what notices are meant, that is, notices under sections 12(2) and 9 only or also notices under section 4. The latter would seem to be irrelevant. The notice of award under section 12(2) is relevant as containing the Collector's final tender, non-acceptance of which or disputes about which give rise to the cause for the reference. The notice under section 9 may also be necessary to explain the effect of non-filing of claims or of its filing after the due time.

Necessity of the party's statements.

Statements of the parties include claim statements under section 9 or any further statements regarding their claims. They are obviously relevant not only as complementary to the statements in the applicaton under section 18(1), but also for the purpose of section 25 *post*. The application of the party under section 18 would, of course, be included as the basis of the reference.

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[6] The instruction in the Bengal Land Acquisition Manual (page 80), are as below :—"The statement of the grounds on which the amounts of compensation have been determined need not be elaborate, but should give sufficient information to justify a reasonable presumption that the award has been made with due care and caution."

20. The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely :—

Service of notice.

(*a*) the applicant ;

(*b*) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded : and,

(*c*) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

What notice to be issued by the Court

Section 20 requires that in starting its proceedings the Court shall first issue notices on—(a) the applicant ; (b) all persons interested in the objection ; and (c) in valuation cases, on the Collector. The notices referred to in (b) and (c) are really of the nature of summons on a defendant under section 27 of the Civil Procedure Code,

—to applicant.

2. *Item* (*a*)—*applicant* : the applicant is in the position of a plaintiff[1]. There is no separate provision corresponding to section 20, for references under section 30 *post.* There being no applicant in such cases, only the notices as required by item (b) would issue.

3. *Items* (*b*) *and* (*c*) : distinguish between "apportionment cases" and "valuation cases". For apportionment cases, all persons interested in the objection that is, all persons claiming the whole or any portion of the compensation money are to be

[1] *Behary Lal Sur vs. Nanda Lal Goswami,* 11 C. W. N. 430 ; *Ezra vs. Secy. of State,* 30 Cal. 36, 7 C. W. N. 249,

served with notice. In valuation cases only the Collector need be served with notice besides the applicant. This would also seem to be consistent with the view taken in the various reported cases that in a valuation reference when the Collector's award is enhanced, a person interested who did not apply for reference, cannot have any benefit of the enhancement obtained by the party who applied[2]. Here the persons concerned are the applicant and the Collector. But in an apportionment reference "all persons interested" in the amount, including those claiming an interest [vide section 3 (b) *ante*], are obviously necessary to be brought into the proceedings before a proper and legally enforceable adjudication can be made[3]. The effect, if such a person be omitted from the proceedings, would be that whatever the decree in the apportionment reference case, it will not bind him, and not only will scope be left for further litigation

to Collector valuation cases.

—to all persons interested, in apportionment cases.

Omitted person not bound by the decision

[2] Where a landlord applied for reference and obtained an enhancement, the tenant who did not apply is not entitled to receive his ratio of the enhancement : *Secy. of State. vs. Manohor Muhherji*, 28 C. W. N. 720. And so conversely when the tenant applied and the landlord did not, *Sasi Kanta Acharyya vs. Abdur Rahman*, 88 C. L. J. 265, A. I. R. 1924 Cal. 158, 75 I. C. 208. See also *Prag Narain vs. The Collector of Agra*, 59 I. A. 155, 54 All. 286, 136 I. C. 449, A. I. R. 1932 P. C. 102, 36 C. W. N. 579.

[3] Item (b) of the section, however, does not require any notice at this stage, to a person interested in the objection who may have consented without protest to receive payment of the compensation awarded. It is not very clear what class of cases is meant by this. The collector would not ordinarily make any payment if the apportionment (which includes title) is disputed by any other person interested : and if the Collector nevertheless does so and the disputing person obtains a reference, the person who has received the payment must be a necessary party for the proper adjudication of the objection. His interest is directly affected : and if the decision is adverse, he may have to refund, *vide* 3rd proviso to section 31(2) *post.*

but the decree itself may be ineffective. It follows that if the Collector has left out any such person in his statement under section 19(1) (b), he is still entitled to the notice under section 20(b), and if he applies to be added as a party under the provisions of the Civil Procedure Code, he would seem to be entitled to be so added[4].

—but may apply to be added.

4. The words "all persons interested" in clause (b) are however qualified by the words "in the objection". This follows from the restrictions to the Reference Court's enquiry in section 21, viz. to the consideration of the interests of the *persons affected by the objection.* A person not affected by the particular objection in the application under section 18, does not require any notice : and if any party who has received a notice or been added in the case, raises a question outside that particular objection, and which it is not necessary to decide for the purpose of adjudicating on that objection, the Court has no jurisdiction to deal with such question; and the scope of the enquiry cannot be enlarged by introducing such questions. See notes under section 21 *post.*

Defendant cannot go beyond the objection in the application under section 18 or enlarge its scope.

5. The local authority or company for which the acquisition is made is not, as such (that is as a requiring body) a "person interested", and is not entitled to notice, though it is entitled to appear and adduce evidence in valuation cases under sec. 50 (2) *post.* But this does not affect its position if it is a person interested in the land as owner, full or partial (see notes para 1 of sec. 18 *ante*) in which case it should have notice as such owner or person interested.

Local authority or company is not entitled to notice but may appear and adduce evidence.

Exception when it is a claimant as person interested

6. It is not indicated what the notice under this section, items (b) and (c), should require. This notice takes the place

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[4] *Hashim Ibrahim vs. Secy. of State,* A. I. R. 1927 Cal. 852, 101 I. C. 589, 31 C. W. N. 884. See notes under section 58 *post.*

of summons on a defendant under the Civil Procedure Code "to appear and answer the claim" made by the applicant. In valuation references [item (c) of the section] the answer on the part of the Collector is already in his "reference" to the Court, and all that is left for the Government is to appear and defend his award. But as for apportionment cases, the notice in effect would require a written statement, confined though it would be to the claim and scope in the application of the applicant.

What the notice to contain : compare summons to defendant under the C. P. Code.

7. It follows that if a person interested does not appear on service of notice under this section the effect will be the same as for non-appearance of a plaintiff or of a defendant on service of summons, under the provisions of the Civil Procedure Code[5]. See notes under section 53 *post*.

Effect of non-appearance on notice.

21. The scope of the enquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

Restriction on scope of proceedings.

While on the one hand the jurisdiction of the Reference Court, is an exclusive jurisdiction [1] and a party dissatisfied with the Collector's award cannot maintain a suit in the ordinary Civil Court, on the other hand the scope of the Court's enquiry (and therefore its jurisdiction) is restricted. It has no jurisdiction unless there has been a valid reference to

No jurisdiction unless there is a reference.

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5 *Hasan Mulla vs. Tasiruddin*, 39 Cal. 393, 15 I. C. 925. So far as the matter is properly within its scope (vide sec. 21), a reference case is as much a suit as any other regular suit. A person noticed under sec. 20, but who does not press his claim to any part of the compensation, is not entitled to any further action on the question in the Civil Court : *Ranajit Sinha vs. Sajjad Ahmed*, 82 I. C. 922 : *Secy. of State vs. Qumar Ali*, 51 I. C. 501 : *Kosturi Pillai vs. Municipal Council*, 58 I. C. 646, 43 Mad. 280.

1 See notes under section 18, para 22 and the case laws therein.

it by the Collector, [2] and this section lays down that when the reference is under section 18 *ante*, the scope of the Court's enquiry is restricted to the consideration of the interests of the persons affected by the objection on which the reference is made. The term "objection" has direct reference to the same term used in section 18, and this restricts the objection to four questions, viz. (i) measurement, (ii) amount of compensation awarded by the Collector, (iii) persons to whom payable, and (iv) apportionment of such amount amongst the several persons interested. Sub-section (2) of that section next enjoins that the grounds on which objection is taken must be stated in the application [3] : and it has been held that the scope of the Reference Court's enquiry is restricted to such of these grounds as are so stated in the application for reference, [4] and that it is not open to the party,—whether he is the applicant or any other person [5] who has not applied but has been inducted as a person whose interest is affected by the objection,—to introduce other grounds so as to enlarge the scope of the enquiry.

Scope restricted to the specific objection taken :

—and this means to the specific grounds stated in the application.

[2] In the matter of *L. A. Act and Nanu Kothare*, 30 Bom. 275 : *Sukbir Singh vs. Secy of State*, A. I. R. 1926 All. 765, 97 I. C. 566, 49 All. 212 : *Ghulam Muhyuddin vs. Secy. of State*, 24 I. C. 379, 208 P. L. R. 1914 : *Samuel Burge vs. Improvement Trust, Lucknow*, A. I. R. 1924 Oudh 127. See also para 21 of the notes under section 18 *ante*.

[3] See para 8 of the notes under section 18 *ante*.

[4] See para 8 of the notes under section 18 *ante*, and the cases referred to therein. See also *Pramathanath Mullick Bahadur vs. Secy. of State*, 121 I. C. 586, A. I. R. 1930 (P. C.) 64, 57 I. A. 100, 34 C. W. N. 289. Also *Secy. of State vs. Fakir Md. Mandal*, 101 I. C. 349, A. I. R. 1927 Cal. 415, 45, C. L. J. 185 : *C. R. M. A. Firm vs. Special Collector of Pegu*, 8 Rang. 364.

[5] *Md. Safi & others vs Haran Chandra Mukherji and others*, 12 C.W.N. 985. *Held*—that the Reference Court cannot go into any question raised for the first time by a party who had not referred any question or any objection to it under section 18. Same view was held in *Gobinda Kumar Roy vs. Debendra Kumar Roy*, 12 C. W. N. 98, and *Abu Bakar vs. Peary Mohan*, 34 Cal. 451. In *British India Steam Navigation Co. vs. Secy of State* (1910), 15 C. W. N. 87, 38 Cal. 230, 12 C. L. J. 505, it was laid down that—"the scope of the enquiry before the Reference Court cannot be enlarged at the

Further, no ground other than such as comes within those stated above, can be taken, and if taken will be outside the jurisdiction of the Reference Court to deal with[6].

Persons affected-meaning of.

2. The expression "persons *affected* by the objection" is not defined. Whoever they be, they will have to be brought into the Court's proceedings: and section 20 (b) *ante* indicates what persons should be served with notice by the Court, viz. all persons interested in the objection, except such of them as may have received payment without protest, and in the case of a valuation-reference, the Collector. In a valuation reference no person other than the Collector (besides the applicant) is affected: for, if there is an enhancement no person, though interested in the land, who is not an applicant objecting to valuation, would be entitled to the benefit of any enhancement in the total amount which may be allowed by the Court[7]. In an apportionment reference all persons interested in the disputed amount would be, in the first instance, persons affected by the objection: for,

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instance of parties who have not obtained or who cannot obtain a reference, so as to include a review of items not objected to by the claimant (i. e. the applicant in the reference before the Court) and unconcerned with any item objected to by him." *Maharala vs. Diwan Mushtaksing*, 25 I. C. 803, where the zemindar disputed the Collector's apportionment by applying for reference, the tenant was not entitled to dispute that apportionment.

[6] For example abatement of rent when a portion of a holding is acquired *Jagabandhu vs. Nanda Lal*, 50 I. C. 798. Separate suit for such or similar matter not within the scope of the Reference Court's enquiry would not seem to be barred, though arising from the acquisition.

[7] *Secy. of State vs. Manohar Mukherji* (1919), 53 I. C. 288, 23 C. W. N. 720: where the landlord obtained an enhancement of the total land-value, but the tenant had not made any reference, held, that the tenant was not entitled to additional amount for the enhancement of the total. Also *Sasi Kanta Acharyya Bahadur vs. Abdur Rahman Sarker* (1924), 75 I. C. 203, 38 C. L. J. 265, A. I. R. 1924 Cal. 158, where the landlord did not apply for reference but the tenant applied and the Court determined a higher amount for the total land-value, the landlord was not entitled to the benefit of it. Also *The Collector of Dacca vs. Golam Ajam Chaudhury* (1936), 40 C. W. N. 1143. A. I. R. 1936 Cal. 688. See notes under section 18 in para 8.

the adjudication of the Court may result in a re-distribution of that amount amongst them all. The question whether any of these persons would eventually be *adversely* affected or not is immaterial,—the presence of them all is necessary [8]. Persons affected include persons interested [9]. When the Collector's reference mentions certain persons as claimants, they are entitled to be present, though not affected by the objection[10]. As to the power of the Court to add parties, see notes under section 53 *post.*

Jurisdiction of the Court in time-barred or improperly made reference.

3. The Reference Court is not strictly a Court of appeal: it is an original Court[11] and its scope being restricted as explained above, it has no jurisdiction to entertain any enquiry where the Collector has not made or has refused to make a reference [12]. Judicial decisions are, however, not uniform as regards the position of the Court when the Collector has made a reference to it improperly, that is, a Reference not in compliance with the law, being time-barred or otherwise. The correct view seems to be that when the Reference Court finds that the reference made by the Collector

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8 From this point of view the reason for the omission of such of these persons who may have received payment without protest (unless it refers only to valuation reference) from notice under section 20 (b), is not clear. In an apportionment reference it is necessary that such a person should be present, for he may be under a liability to refund. See notes under sec. 20 *ante.*

9 See notes in para 5 of section 3 (b) *ante.*

10 *Surendra Nath Tagore vs. K. S. Bonerjee* (1927), 86 I. C. 789, A. I. R. 1925 Cal. 630, 29 C. W. N. 840.

11 *Bommadevara Venkata vs. Atmori Subbarayudu* (1911), 12 I. C. 486, 36 Mad. 895. In *C. R. M. A. Firm vs. Special Collector of Pegu,* 8 Rang. 364, it was held that the Court's proceeding was a separate enquiry and was not a mere continuation of that of the Collector's. In *Ananta Ram Banerjee vs. Secy. of State,* 41 C. W. N. 1291, 66 C. L. J. 134, A. I. R. 1937 Cal. 680, their Lordships observed—"though the proceedings before the Collector are not strictly judicial proceedings, the Court of the Special Judge on a reference, is in effect (though not strictly in law) the appellate Court."

12 *Secy. of State vs. Hakim,* 25 I. C. 448, 244 P. L. R. 1914. Only a reference made by the Collector in compliance with the provisions of law, gives jurisdiction of the Reference Court. See cases under foot (2) *ante,*

was not in compliance with the law, the Court gets no jurisdiction[13].

Procedure in the Court's enquiry.

4. The provisions of the Civil Procedure Code apply to the Court's proceeding, save in so far as they may be inconsistent with anything contained in this Act, vide section 53 *post*. The objector (that is, the applicant for reference) is in the position of a plaintiff and is to lead the evidence and the burden of proving in the first instance that the Collector's award whether it is in the matter of valuation or of apportionment (as the case may be) is wrong, is on the objector[14]. In a valuation-reference, this burden would be considerably lightened if the Collector has not stated in his reference, grounds of his award in a manner as would raise a presumption that it was made with due care and caution[15].

Burden of proof.

Form and effect of the Court's decision.

5. As to the form of the Court's decision and its effect on the parties who are included in the proceedings and who are not so included, see section 26, 30 and 53 *post* and notes thereunder.

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[13] *Sukhbir Singh vs. Secy. of State* (1926), 97 I. C. 566, 49 All. 212, A. I. R. 1926 All. 766: *In the matter of L. A. Act and Nanu Kothare*, 30 Bom. 275: *Samuel Burge vs. The Improvement Trust* (1924), 78 I. C. 127, A. I. R. 1924 Oudh 127: *Ghulam Muhyuddin vs. Secy. State* (1914), 24 I. C. 879, 208 P. L. R. 1914: *Collector of Akola vs. Anand Rao*, 11 I. C. 690. *Contra*: *Secy. of State vs. Bhagwan Prasad*, A. I. R. 1932 All. 597, 141 I. C. 621 following *Secy. of State vs. Bhagwan Prasad and another*, A. I. R. 1929 All. 769, 124 I. C. 529. Also notes in para 21 of section 18 *ante*.

[14] *Ananta Ram Banerjee vs. Secy of State*, 41 C. W. N. 1291, 66 C.L.J. 181, A. I. R. 1937 Cal. 680: *Arunachala Aiyar vs. Collector of Tanjore*, 96 I. C. 279, A. I. R. 1926 Mad. 961: *Harish Chunder Neogy vs. Secy. of State*, 11 C. W. N. 875: *Marwadi Padamji vs. Deputy Collector of Adoni*, 24 I. C. 141, 27 M. L. J. 106: *Asst. Development Officer vs. Tayaballi Allibhoy*, A. I. R. 1933 Bom. 361.

[15] *Harish Chunder Neogy vs. Secy. of State*, 11 C. W. N. 875: *Fink vs. Secy. of State*, 34 Cal. 599: *Madhusudan Das vs. Collector of Cuttack*, 6 C. W. N. 406.

6. The expression "such proceeding" in section 21, means proceeding on a reference made on the application by a party under section 18 *ante*. As such, this section and the observation in the several paragraphs above, would not strictly apply to proceedings of the Court on a reference under section 30 or 37 or 49 *post*. But see notes under these sections.

Sec. 21 applies only to references on application under Sec. 18.

22. Every such proceeding shall take place in open Court, and all persons entitled to practise in any Civil Court in the province shall be entitled to appear, plead and act (as the case may be) in such proceeding.

Proceedings to be in open Court

Section 22 lays down that the Reference Court's proceedings should be in open Court, as in an ordinary Civil Court. This follows also from section 53 *post*, which lays down that the provisions of the Civil Procedure Code will regulate the Reference Court's proceedings, except so far as they are inconsistent with anything laid down in this Act.

23. (*1*) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—

Matters to be considered in determining compensation

first, the market-value of the land at the date of the publication of the [1] [notification under section 4, sub-section (*1*)] ;

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on

1. These words and figures were substituted for words and figure "declaration relating thereto under section 6" by sec. 7 of the Land Acquisition (Amendment) Act, 38 of 1923.

the land at the time of the Collector's taking possession thereof ;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his otherl and ;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, moveable or immoveable, in any other manner, or his earnings ;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change ; and

sixthly, the damage (if any) *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(*2*) In addition to the market-value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition.

Scope of the section.

This section analyses and codifies the various matters which must be taken into consideration [1] in determining the amount of compensation in land acquisition under this Act. These are *first*—what is the market-value of the land, and *next*—what are the damages which the persons interested are forced to suffer by reason of the acquisition. Sub-section (2) provides an additional compensation of 15 per cent on the market-value of the land,—the reason for which may be taken either as the value of the trouble to which the owner is put owing to the compulsion or as his costs during the land acquisition proceedings or both. The provisions are meant for the guidance of the Court as stated in the section itself, as well as of the Collector, vide section 15 *ante*.

Follows the principles in English law.

2. In the enumeration of various matters in sub-section (1), there is no departure from the fundamental principles recognised in English law for compensation in compulsory acquisition of land, viz.—

(i) that all persons who are deprived of any interest in the land to be taken are entitled to receive compensation for such loss[2] ;

(ii) that the loss or injury suffered is the criterion and all such persons are entitled to compensation for the "full amount of the injury (on account of the acquisition) done to them" ;

(iii) that damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner or otherwise injuriously affecting of such lands by the exercise of the powers of the special Act or

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[1] Section 24 similarly enumerates certain matters which must not be taken into consideration. But as will be explained later these enumerations are not exhaustive.

[2] Sections 18 and 68 of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict : c. 18) ; and also section 2 read with sec. 7 of the Acquisition of Land Act, 1919 (9 & 10 Geo. 5. ch. 57) applicable to acquisition for a department of Govt. or local or public authority. Curtis puts this general principle thus :—"to ascertain what a man will *lose* by having his land taken away and to pay him that value" (6th Ed, p. 199). See also Halsbury, Vol. 6, articles 86, 87 and 89.

any Act incorporated therewith [3] (i. e. in execution of the *declared* purpose of the acquisition), must be compensated for;

(iv) that in ascertaining the value (of the land) to the owner in respect of its use by him, loss of business and of good-will in so far as they enhance that value to him, may be regarded [4]:

(v) that loss incurred until other suitable premises are obtained [5], costs of removal [6], and the value of fixtures if taken or the loss on them if not taken [7], are to be compensated for.

Potential value and reinstatement.

3. From these have evolved two other principles, viz :—

(a) the principle of "potential value"[8] including "special adaptibility" of the land that is its peculiar suitability or adaptibility [9] for some particular purpose which enhances its value :

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[3] Sections 49 and 63 of the Land Clauses Consolidation Act, 1845.

[4] *White vs. Works and Public Buildings Commissioners* (1870) 22 L. T. 591 (11 Digest 128, 176): *Cooper vs. Metropolitan Board of Works* (1883), 25 Ch. D. 472 C. A. (11 Digest 128, 177).

[5] *Jubb vs. Hull Dock Co.* (1846), 9 Q. B. 443.

[6] *Morgan vs. Metropolitan Rail Co.* (18'8) L. R. 4 C. P. 97, Ex. Ch: *R. vs. Rochdale Improvement Act Commissioner* (1856) 11 Digest 280, 2085.

[7] *Gibson vs. Hammersmith Rail Co.* (1863), 32 L. J. (Ch) 337, (31 Digest 194, 3300).

[8] Where agricultural land had a potential value as being suitable for building purposes owing to proximity, *R. vs. Brown* (18?7) L. R. 2 Q. B. 630 (11 digest 125, 160): Same principle in the Privy Council case of *Atmaram vs. Collector of Nagpur*, A. I. R. 1929 P. C. 92, 114 I. C. 587, 33 C. W. N. 458. So where land was specially adaptable for a mill being near a reservior *Ripley vs. Great Northern Rail Co*, (1875) 10 Ch. App. 435 (11 Digest 126, 161); and where mines which could not be worked at a profit had a prospect and a potential value, *Brown vs. Railways Commissioner* (1890) 15 App. Cas 240 (11 Digest 126, 163).

[9] *Manchester Corporation vs. The Countess of Ossalinsky*, known as the "Thirlmere Case"—(referred to in the Compulsory Purchase Act, by Adkin Lawrence 2nd Ed. Pt. II at page 54). An enhanced value for land was allowed owing to "its natural and peculiar adaptation for the collection, diverting and impounding of water, and as a suitable site for the construction of a reservoir." *Glass vs. Inland Revenue* (1915) S. C. 449: Re *Gough and Aspatria etc. Board* (1904) 1 K. B. 417 C. A. (11 Digest 127, 168).

and (b) the principle of "re-instatement" where the land is used for some particular purpose not of a commercial nature, such as churches, schools, business of a special nature and the like[10].

Theory of "value to the owner".

4. From all these has arisen the theory of "value to the owner" in compensation for compulsory acquisition of land, as opposed to mere "market-value" i. e. the value which a willing seller may expect from a willing purchaser in the open market. For instance, when a person sells a portion of his land, the purchaser is not concerned with what damage the vendor suffers for any diminution of value in the remaining land and would not pay him for it : nor would he pay for his removal or loss of business if he happen to live or have a business on the land. The principles in compulsory acquisition have, necessarily from the nature of the matter, to be on a different basis. Section 23 of the Land Acquisition Act separates out[11] the "market-value" of the land in the first clause of sub-section (1), and then enumerates a number of items on which compensation has to be paid over and above this market-value. When all these are taken together, the total would result in what is implied by "value to the owner."

The enumeration in sec. 23 (1) covers these principles.

5. To analyse the position further : according to sec. 23(1), the compensation to be awarded is to comprise :—

(1) market-value of the land (clause first) ;

(2) damage to standing crops or trees (clause secondly) ;

(3) damage for severance of other lands (clause thirdly) ;

(4) injurious affection of other property, moveable or immoveable, in any other manner, or his earnings (clause fourthly) ;

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10 *London School Board vs. South Eastern Rail Co.* (1887) 3 T. L. R.

11 This method has been adopted also in the English Acquisition of Land Act, 1919, sec. 2(2) which provides that the value of land shall be taken to be "the amount which the land if sold in the open market by a willing seller might be expected to realise."

Sub-section (1)—clause first.

Market-value.

8. The principle indicated in clause *first* of sub-section (1), for the valuation of land, is that it should be the *market-value* at the *date*[1] *of the publication of notification under section* 4 (1), and "land" as defined in section 3(a) includes benefits to arise out of land and things attached to land and also easements. (See notes under section 3(a), *ante.*)

—not defined.

"Market-value" is not defined in the Act. The expression is the same as in the old Act X of 1870. There was a proposal during the debates which led to the Act of 1894, to define the expression or to substitute it by the word "value". The Select Committee in their Second Report (para 14), objected to this, saying:—"No material difficulty has arisen in the interpretation of it (the expression 'market-value'); and the decisions of the several High Courts are at one in giving it the reasonable meaning of the price a willing buyer would give to a willing seller; but the introduction of a specific definition would sow the field for a harvest of decisions; and no definition could lay down for universal guidance in the widely divergent conditions of India, any further rule by which that price should be ascertained". The view of the Select Commitee was accepted by the Council.

Meaning of market-value.

9. Of these decisions, the leading one was *Premchand Burral & anr. vs. Collector of Calcutta* (1876)[2]. The meaning of market-value as expounded in this case may be summarised thus :—

(1) the market-value is the price of similar property in the neighbourhood, that is to say the price obtained in the sales (at or about the material time) of such similar property :

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[1] As to whether this material time should be the date of notification under section 4(1) or the date of declaration under section 6 when the Land Acquisition Act is inducted by special provisions in a local or special Act prior to 1923, see para *21 post* of these notes.

[2] 2 Cal. 103. These principles had also been accepted in other cases, viz. Re. *Munji Khetsey* (1890) 15 Bom. 579 : *Collector of Poona vs. Kashinath* (1886) 10 Bom 585.

(2) the market-value is not to be based merely on the present disposition of the property, but also on consideration of any reasonable lay-out by which the owners could dispose of it in the most lucrative and advantageous manner.

The controversy centred round the question whether the value to be paid in compulsory acquisition should be "the value of the property to the owner" or its value in the market as between a willing vendor and a willing buyer. "Value to the owner"is a principle recognised in the English law,but it has been explained in paras 3 and 4 *ante*, that when certain factors were separated out from the "value to the owner", such as has been done by clauses *secondly* to *sixthly* of section 23(1), what would be left would be the "market-value" of the land as in clause *first*.

English law and market-value.

10. The English Acquisition of Land etc. Act, 1919 does not use the expression "market-value", but states that—"the value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise" : section 2(2). Adkin and Lawrence in their "Compulsory Purchase Acts" published in 1930, state that up to that time no case had been fought out on the above provision : but refer to a case[3] decided in 1914, under the Finance (1909-10) Act, which requires ascertainment of "gross value", and defines "gross value" as "the amount which the fee-simple of the land if sold at the time in the open market by a willing seller in its then condition * * * might be expected to realise". In this case "value in the open market" was explained as "such amount as the land might be expected to realise if offered under conditions enabling every person desirous of purchasing, to come in and make an offer, and if proper steps were taken to advertise the property and let all likely purchasers know that the land is in the market for sale". A "willing seller" was explained as a person "who is a free agent and cannot be

[3] *Inland Revenue Commissioners vs. Clay and Buchanan* (1914) 3 K. B. 466.

required by virtue of compulsory acquisition". The expression "expected to realise" was explained as referring to "the expectations of properly qualified persons who have taken pains to inform themselves of all the particulars ascertainable about the property, and its capabilities, the demand for it, and the likely buyers". This analysis is equally pertinent when ascertaining the "market-value" for land-acquisition purposes or for testing whether any sale which is sought to be applied represented the proper "market-value" of the property sold.

11. The views taken by the Indian Courts on the meaning of "market-value" *after* the Act of 1894, may be summarised thus :—

(1) *Kailas Chandra vs. Secy of State* (1910)[4] :—"The market-value of land is roughly the price that an owner willing and *not obliged* to sell, might expect from a willing purchaser with whom he was bargaining".

(2) *Brijrani vs. Dy. Commissioner, Sitapur*[5]—"The market-value means the price that would be paid by a willing buyer to a willing seller, when both are actuated by business principles prevailing at the time".

(3) *Bombay Improvement Trust vs. Jalbhoy* (1909)[6]—"The market-value means the price which would be obtainable in the

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[4] 18 I. C. 688. 17 C. L. J. 84. For the same view see also :—*Collector vs. Manager, Kurla Estate*, A. I. R. 1926 Bom. 228, 98 I. C. 142 : *Manmatha Nath Mullick vs. Secy. of State*, 83 I. C. 442, A. I. R. 1924 Cal. 574, 28 C. W. N. 461 : *Swarnamanjari Dassi vs. Secy. of State*, A. I. R. 1928 Cal. 522, 112 I. C. 706, 55 Cal. 994, 32 C. W. N. 421 : *Reddiar vs. Secy. of State* A. I. R. 1928 Rang. 65, 109 I. C. 11, 5 Rang. 799 : *Khushiram vs. Asstt. Commissioner of Shikarpur*, A. I. R. 1925 Sindh. 112, 79 I. C. 876 : *Girish Chandra Roy Chowdhury & others vs. Secy. of State* (1919), 55 I. C. 150, 24 C. W. N. 184 : *Govt. of Bombay vs. Merwan Moondigar*, A. I. R. 1924 Bom. 161, 82 I. C. 796, 48 Bom. 190—seller to be willing and purchaser to be prudent.

[5] 57 I. C. 801, 23 O. C. 89. Same view in *Ali Quader vs. Secy. of State* 121 I. C. 892, A. I. R. 1930 Oudh 223. The potential value of the property would be automatically included in such valuation.

[6] 34 Bom. 618, followed in *Manmatha Nath Mullick vs. Secy. of State* ibid.

market for that concrete parcel of land with its particular advantages and the drawbacks, both the advantages and the drawbacks being estimated rather with reference to commercial value than with reference to any abstract legal rights."

Recognised methods of valuation :—

12. From this exposition of the market-value of land, it follows that actual sales of similar lands in the locality (and by way of that of the land in question itself) at about the material time should give an index of the proper market-value. In the case of *Harish Chunder Neogy vs. Secy. of State* (1907)[7] three recognised methods of valuation of land have been indicated thus :—

—bonafide sales.

(1) "The price paid within a reasonable time in *bona fide* transactions of purchase of the lands acquired or of the lands adjacent to the lands acquired and possessing similar advantages" :

—annual value

(2) "A number of year's purchase of the actual or immediately prospective profit from the lands acquired" :

—expert opinion and (3) "the opinion of valuators and experts".

The same analysis is made in *Fink vs. Secy. of State* (1907), 34 Cal. 599, in which it is observed that the market-value of the land has to be ascertained—(1) from recent instances of sales in the same or in adjoining localities : and (2) the average rental of them and similar lands in the vicinity. In *Farman vs. Secy. of State*, 63 Pun. R. 1907, three methods of arriving at the market-value of (agricultural) land were indicated :—(a) comparison with recent sales of neighbouring lands, (b) capitalisation of net profit and (c) capitalisation of the land revenue. In re : *Munji Khetsey* (1890), 15 Bom. 279, methods similarly indicated are—(1) previous sales of the land (or part), or of neighbouring lands, making allowances for situation etc., and (2) a certain number of years' purchase of the net annual income of the land ;and in *Land*

[7] 11 C. W. N. 875. Same also in *Mirchandani vs. Special L. A. Officer Karachi*, A. I. R. 1927 Sind. 168, 101 I. C. 269.

Acquisition Officer vs. Fakir Mohammad (1933), 143 I. C. 699—(1) price paid, within a reasonable time, for the land, (2) the rents and profits of the land received shortly before the acquisition, (3) prices paid for adjacent lands possessing similar advantages, and (4) opinion of valuators and experts.

Indian Court's preference to "sales".

13. The Courts in India are however, inclined to give first consideration to values from recent sales of the land itself or of similar lands in the locality [8]; and the method of valuation by capitalisation of the annual rent or income is made rather subsidiary, to be used as a test or check to the result obtained by the other method. The authorities in England, however, put the capitalisation method as the proper scientific method for first consideration in determining the value of landed properties. Curtis in his "Valuation of Land and Houses" (6th Ed : page 26) puts it thus :—

"Nearly all property is valued according to the capacity it possesses of producing revenue. The actual rent derived from a property, or the rental value of it, is adopted as a basis for its valuation by deducting therefrom the appropriate outgoings (if any) to ascertain the net income which will be capitalised to find the value".

Webb in his "Valuation of Real Property" explains the same rule thus :—

"* * the valuer as a rule bases his calculation upon the net annual income which will be forthcoming if the property is put to the best possible use. In some cases, however, it is found necessary to value the land and buildings separately".

By this, it is not to be understood that actual market-conditions as evidenced by sales are ruled out by English authorities.

[8] Best evidence of market-value is the evidence of genuine sales of the same land or of similar lands in the neighbourhood—*Khusiram vs. Asstt. Commissioner of Shikarpur*, 79 I. C. 376, A. I. R. 1925 Sind 112 : See also *Amrita Lal Basack vs. Secy. of State*, 22 I. C. 78 : *Narsingh vs. Secy. of State*, 70 I.C. 578, A.I.R. 1922 Lah. 327 : *Secy. of State vs. Manmatha*, 84 I. C. 371, A.I.R. 1925 Pat. 129. Sales are the best criterion of the market-value : *Biswa Ranjan vs. Secy. of State*, 11 I. C. 62.

Various matters have to be taken into account in fixing the proper annual value or rental, and before the valuer forms his opinion on this, or as to the number of years' purchase to be adopted, he is required to refer to "the records of the property-market, his past experience of buying and selling, and his expert knowledge of the circumstances and conditions of the property to be valued" (Curtis p. 5). Where existing rents do not give the proper annual value, abstract ideas of what this proper annual value or rental might be, have to be very much tempered by considerations of "demand and supply" of which the market-conditions as evidenced by actual transactions afford, no doubt, a good index. Morever, in India it is well-known that rents in agricultural areas [9] and even in towns (except at business centres), are far from what may be called commercial or economic rent. There are also the factors of lack of enterprise, paucity of funds,—joint family system and quarrels amongst co-sharers, and traditional sentiment of respect for old things however rotten or useless. A good proportion of houses in Indian towns are ill-developed or under-developed, many with old type buildings yielding poor income while it is not infrequent that even where values of bare land are in the neighbourhood of Rs. 10,000/-per cotta (one cotta is equivalent to about one-sixtieth of an acre), there still exist dilapidated houses, old-type buildings, and even poorly built huts.

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[9] In permanently settled areas (in Bengal, Behar, Benares and portions of Assam, Orissa and Madras) statutory restrictions on rent are complicated by the various kinds of rights of different grades of tenants which have evolved partly from statutory provisions regarding occupancy rights so far as regards the "raiyats", and partly from the comparative freedom for contract as regards the tenure-holders who intervene between the raiyat and the settlement-holder (Zaminder) under Government. In the United Provinces, the Punjab and the Central Provinces, the basis of assessment is theoretically the economic rent, but it is qualified by various considerations. Similarly the "net-produce" basis of Madras and Burma is also largely qualified. "Bombay does not even profess to have have any definite principles of assessment and follows a frankly empirical system depending upon general economic considerations as they impress the Settlement Officer"—Jather and Beri—Indian Economics (3rd Ed.) Vol. 1 p. 394.

The view taken by the Indian Courts of treating sales of similar lands in the neighbourhood, tested wherever possible by the rental method, as a safer and more convenient method of ascertaining the market-value, has no doubt been largely induced by these factors and the difficulties they create in determining the proper annual value or rental or in capitalising the same.

Requisites of sales etc.

Admissibility of sales etc. under the Evidence Act

14. Apart from any other section which may be applicable, judged under section 11 of the Indian Evidence Act, a transaction (e.g. a sale) regarding another piece of land in the neighbourhood, is relevant for showing (1) that the price obtained in that transaction is inconsistent with any assumed market-value for the land under acquisition, or (2) that the transaction by itself or in connection with other facts make the assumed value of the land under acquisition highly probable or improbable. Sales of neighbouring lands would thus always be relevant, but their probative value would obviously depend upon several main circumstances, viz. whether the price obtained in such a sale represented the proper market-value of that property, and how far the property is comparable with the property under acquisition. The date of the sale is also important, for, the material time for the market-value of the land under acquisition is the date of notification under section 4(1), and the interval between that date and the date of the transaction would be an important element for consideration.

their probative value.

Sales may not give the proper market-value.

15. The price obtained in a particular sale may not be the proper market-value of the property sold, for various reasons. For instance, the sale might have been a forced one, as by an owner in extreme stress of need or pressure, and conversely it might have been to a person to whom the addition of the land gave an

enhanced value to his other lands[10] or was of special advantage to him. The sale might have been without proper enquiry, publicity or opinion of expert valuers : or it might have been to a person who acted through unreliable agents or intermediaries. The sale might not have been quite genuine either, and so forth. The same tests as are summarised in paras 10 and 11 *ante* for the market-value of land to be acquired, would equally apply. It is difficult, however, to find all these ideal requirements satisfied in the conditions of this country, particularly in rural areas. The views taken by Indian Courts, as circumstances arose, may be summarised thus :—

Sales must be genuine and also not forced.

(i) A sale to be dependable for the purpose of valuation, must be "genuine" [11]. A forced sale i. e. a sale which a vendor in his position and circumstances at the time was obliged to make, is no criterion [12] : On the principle of this rule, Court-sales and sales in settlement of mortgage dues and the like are treated with hesitation. Similarly it has been held that the sale by a Hindu widow of neighbouring land cannot afford the basis for calculating the market-value, as the full value is not fetched in such transactions [13].

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[10] For example when he has adjoining lands which would be improved in value by the addition. Somewhat similar is the case of a purchase by a co-sharer of the property of an undivided share. Purchase of an undivided share by an outsider is often of the nature of speculation or follows a mortgage of such a share.

[11] The leading case is *Harish Chunder Neogi vs. Secy. of State*, 11 C. W. N. 875, in which prices paid within a reasonable time "in *bona fide* transactions of purchase of lands acquired or of lands adjacent to the lands acquired and possessing similar advantages", are indicated.

[12] *Kailas Chandra vs. Secy. of State*, 17 C. L. J. 34 : *Swarnamunjuri Dassi vs. Secy. of State*, 55 Cal. 994, 112 I. C. 706, A.I.R. 1928 Cal. 522, 32 C. W. N. 421 : *Reddiar vs. Secy. of State*, 5 Rang 799, 109 I. C. 11, A. I. R. 1928 Rang. 65 : *Govt. of Bombay vs. Merwan Moondigar*, 48 Bom. 190, 82 I. C. 796, A. I. R. 1924 Bom. 161 ; *Secy. of State vs. Charlesworth Pilling & Co.* 28 I. A. 121 : *Khushiram vs. Asstt. Commissioner of Shikarpur*, 79 I. C. 376, A. I. R. 1925 Sind. 112.

[13] *Nityananda Das vs. Secy. of State*, 57 I. C. 784.

Positive tests of a bona fide sale.

(ii) Positive tests of a *bona fide* sale which may be relied upon are, amongst others :—

(a) Whether sold in open market [14].

(b) Whether there was advertisement or sufficient publicity and bargaining [15] :

(c) Whether the purchaser was a person of good ability and well qualified to put the land to the best advantage [16] :

(d) Whether the seller and the buyer were actuated by business principles [17] :

(e) What previous enquiries were made, whether experts were consulted, in short whether the transaction was gone into with due care and caution on either side.

All these principles have been well discussed and summed up in the case of *Government of Bombay vs. Merwan Moondigar* (ibid).

The question as to how far a sale or other transaction can be taken as an index to the market-value of the property under acquisition, depends upon the extent to which the requirements above are proved or disproved by one or the other party. The position would thus depend much on the circumstances of each case. In *Atmaram vs. Collector of Nagpur*,[18] the Privy Council observed that it was strange that when the Collector sought to rely on certain transactions (to wit his own awards in other cases accepted by the parties therein), it was left to the opposite party to bring the owners to show that these were not applicable. This however, does not, as explained in *Secy. of State vs. Nagendra Kumar Bose* [19], mean that a sale or an accepted award must

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14. *Govt. of Bombay vs. Merwan Moondigar*, 48 Bom. 190.

15 *Kailas Chandra vs. Secy. of State*, (1910) 17 C. L. J. 34.

16 *Biraba Narayan vs. Collector of Cuttack*, 39 I. C. 14, 2 P. L J. 147.

17 *Brijrani vs. Dy. Commissioner, Sitapur*, 57 I. C. 301 : A sale of land for the purpose of a mosque for a nominal sum, obviously influenced by religious and charitable motives, is no criterion for the market-value : *Mahommed Ismail vs. Secy. of State*, A. I. R. 1936 Lah. 599.

18 114 I. C. 587, A. I. R. 1929 (P.C.) 92, 33 C. W. N. 458, 31 Bom. L. R. 728, 57 M. L. J. 81.

19 42 C. W. N. 27.

be proved by the owner himself (or by way of that by a person best able to explain the circumstances) before it can be admitted in evidence. The only question was what probative value such evidence would have, if these circumstances were not cleared. To quote from the judgment in the case :—"If the owner is not examined and if the circumstances leading to the accepted award are not disclosed, it is open to the claimant in the case who wants to minimise the effect of such an award, to establish that the accepted award had not the probative value or the weight as the Government would attach to the same." It was a case in which the Government sought to rely upon accepted awards of certain other lands : but the same principles would apply when a transaction, such as a sale or an accepted award, is sought to be relied upon by the claimant.

Speculative purchases.

(*iii*) *Speculative purchases* are not necessarily to be rejected because speculative. The following were the observations made by Mulla J. in *Govt. of Bombay vs. Merwan* (1923), 48 Bom. 190 :—

"The mere fact that a parcel of land is bought by a speculator with the object of reselling it at a profit, is no ground for disregarding the sale. It is a notorious fact that a large wave of speculation in land passed over Bombay in 1919 and 1920. It started at the beginning of 1919 and the high water-mark was reached in February 1920. This level was maintained till August 1920, and then it began to subside. The test of market-value is the test of the sale in the open market, the seller being a willing seller and the purchaser a prudent one, that is one who makes his offer after making necessary enquiries as to the value of land. One cannot possibly ascertain the market-value of a piece of land *at a given time* if he excludes from consideration the state of the market *at that time.* Therefore the high rates prevailing in 1919 and the first half of 1920 cannot be ignored."

This does not mean that they would be followed if the date of acquisition be later than 1920 when market-values and market-conditions were different. In *Secy. of State vs. Charlesworth Pilling & Co.* (1901), 28 I. A. 121, 26 Bom. 1, it

was held that such speculation as had actually entered into the market-price at the material time, i.e. the date of notification, may be taken into account.

Land to be similar.

16. But before a sale of another property can be applied to the land under acquisition, it is obviously necessary that such land should be similar and similarly situated, or as has been held in a Calcutta case [20], "precisely parallel in all circumstances".

Dissimilar lands—agricultural areas.

Lands "precisely parallel in all circumstances" are difficult to get except in purely agricultural tracts, where one piece of land does not differ much from another, and where size or shape is not of much effect. Even in such tracts advantages or disadvantages as regards irrigation, protection against floods, or for lowness or highness etc. exist. Proximity to town and a reasonable probability to its assimilation into building or accommodation sites give agricultural land a higher value. So, where the value of ordinary agricultural land was applied to land in close proximity to the town and thus having a value as a "building site in undeveloped condition" (that is, a potential value as building site), their Lordships of the Privy Council held that this was wrong [21].

Dissimilar lands —town areas.

17. (1) Howsoever it may be possible in rural-areas to make adjustments (viz. by addition or deduction) before applying the value obtained in a sale of some other land not exactly similar, such a position is fraught with considerable difficulties in town areas. Here values differ greatly owing to difference in position, road-frontage, depth, size, shape etc. It has been opined in a number

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[20] *Raghunath Das vs. Collector of Dacca*, 11 C. L. J. 612, 6 I. C. 457 : *Khusiram Deomal vs. Assistant Commissioner, Shikarpur*, 79 I. C. 376, A. I. R. 1925 Sind. 112, where the expression used is—"exactly similar in all its circumstances."

[21] *Atmaram vs. Collector of Nagpur*, 114 I. C. 587, A. I. R. 1929 (P.C.) 92, 33 C. W. N. 458, 49 C. L. J. 398.

of reported cases [22] that with proper allowances and deductions, a more or less correct valuation may be obtained which may be applied to the land under acquisition. The opinions of expert valuers with experience as to what these proper allowances should be and how they can be conveniently calculated, play a great part in such cases. But it is obvious that the less the extent of dissimilarity and the scope for opinionative deductions and allowances, the more dependable would the sale be, assuming that it is otherwise one which can be relied upon. Any instance of sale of a different locality or of an area with different aspects [23] ought to be ruled out. Values inside a side-road or alley from a main road, though influenced by the proximity of that road, are usually so different that no proper deduction can be made from the values on the main road [24].

(2) The most common difficulties arise from—(a) differences in shape, size, road frontage, depth etc. and

(b) the sale-premises or the acquisition premises or both, having buildings or other structures on them.

Dissimilarity in shape and size-belting.

For convenience of dealing with differences as in (a), expert valuers both in England [25] as well as in India, have devised the convention of what is called "belting", which to state generally, means taking land up to a certain depth (according to the nature of disposition of houses on the particular road), at a certain rate per cotta of land, and at a

[22] In re : *Munji Khetsey* (1890), 15 Bom. 279 : *Fink vs. Secy. of State* (1907) 34 Cal. 599 : *Trustees for the Improvement of the City of Bombay vs. Karsandas* (1908) 33 Bom. 32 : *Roghunath Das vs. Collector of Dacca* (1910) 11 C. L. J. 612 : *Amrita Lal Basak vs. Secy. of State* 22 I. C. 78.

[23] *Kanwar Ramgur Singh vs. Secy. of State*, 21 I. C. 270, 309 P. L. R. 1913. See also—*Hem Chandra vs. Secy. of State*, 31 C. L. J. 204, 56 I. C. 758 : *Secy of State vs. Monmatha Nath Dey*, A. I. R. 1925 Pat 129, 84 I. C. 371.

[24] *Secy. of State vs. Bhupati Nath Deb*, A. I. R. 1936 Cal. 346 : *Ismailji Mohomedali vs. Dy. Collector, Nasik*, 141 I. C. 352, A. I. R. 1933 Bom. 87 : *Collector of Dacca vs. Asrof Ali*, 56 C. L. J. 558, A I. R. 1933 Cal. 312.

[25] Curtis, 6th Ed : P. 98.

lesser rate for the land beyond and so forth. Dissimilarities also arise from the land having an extra access or having a return frontage by a side road or a road at the back. But the greatest difficulty in the application of the sale of a neighbouring premises arises in circumstances under (b) above, when, for instance, the sale premises represents the total value of the land with buildings or other structures thereon, while the land under acquisition is bare land without any building or structure. Here, before the sale can be of any use, this total price has got to be split up between what may be taken as the value of the bare land of the premises and what as the value of the buildings or structures on it. At first sight it may appear that if the depreciated value of the building or the structures were deducted from the total value, the balance will represent the value of the bare land of the premises. But a little reflection would shew that the buildings or other structures may be so old or so ill-adapted or badly located or constructed that they are a hindrance to such full or proper [26] development of the land as there is scope for in the bare land which is under acquisition : and as it has been observed in a Bombay case [27], in such circumstances if X was the value of the building or other structure, and Y the value of the bare land, X + Y does not necessarily represent the value of the property. The buildings or other structures on the premises of which the sale is sought to be applied, may have thus to be treated at no more than their value as break-up materials. Similarly when the position is reverse, e. g. when the sale-premises consist of bare land, while the land under acquisition has a building or other structure on it : and more complex would be a case when both have buildings or some structures on them, but of different

Due to extra access or return frontage.

Dissimilarity due to buildings or not on the land.

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[26] Or, as may be said, using it in the most advantageous and lucrative manner, e.g. by building a two or three-storied building or other structure according to up-to-date requirements and demand in the locality.

[27] *In re. Dhanjibhoy Bomanji*, (1907) 10 Bom. L. R. 701.

sorts. These circumstances are very common in urban areas, and opinions of experts should be particularly helpful as to how far any deductions can be made from a particular sale when sought to be applied for valuing the land which is under acquisition.

Previous purchase of the same property.

18. The elements of dissimilarity will be least present when the transaction sought to be applied is a previous purchase of the same property which is under acquisition: and it has thus been held that the sale-price of the property itself which is under acquisition, would be a better guide than a sale of other properties, howsoever similar [28]. But the purchase would be equally subject to the tests of genuineness as explained in para 11 *ante*: and the fact that the owner of a house had obtained his property at a cheap price would not justify the L. A. Collector to award a sum below the fair market-value [29]. In the case of *K. P. Frenchman* (*ibid*) McLeod C. J. summed up the position thus :—The two most important questions are—(1) whether the claimant has paid so high a price that the Court may consider that he had not displayed the ordinary caution which a purchaser of land should display : and (2) whether there has been any increase in the value of property in the neighbourhood within the few months which elapsed between his purchase and the Government notification. When Government notified the property for compulsory acquisition they were bound to offer the claimant what he had given a few months before for the property, unless they were able to show conclusively that he had not given a fair value for the property." Additions and alterations made in the property since the pur-

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[28] *K. P. Frenchman vs. Astt. Collector, Haveli*, A. I. R. 1922 Bom. 899 : *N. H. Mirchandani vs. Spl. L.A. Officer, Karachi*, 101 I. C. 269, A. I. R. 1927 Sind 168 : *Govt. of Bombay vs. Ismail Ahmed*, 85 I. C. 581, A. I. R. 1924 Bom. 862. So also in *Lala Narsinghdas vs. Secy. of State*, A. I. R. 1922 Lah. 327, it has been observed that in calculating the value of a piece of land, the price previously paid for a portion of it affords infinitely the best material.

[29] *Qamar Ali vs. Collector of Bareilly*, 28 I. C. 542.

chase would also have to be considered : so also the lapse of time between the date of the purchase and the date of the notification.

Dissimilarity of interest.

19. Just as similarity or dissimilarity in situation, shape, size etc. is an important factor for consideration before a sale of a neighbouring land can be relied upon, so also the nature of the interest sold in the transaction. The value obtained in the sale is, of course, the value only of the interest sold. If it is a leasehold interest, it is the value of such limited interest : if it is subject to a mortgage or other charge it is limited by such incumbrance, and so forth. The point is particularly important with regard to sales in rural areas where the vendor is either a tenant [30] or a landlord whose rights are subject to statutory restrictions according to the local tenancy laws applicable in the area, and also to similar rights or disabilities of the under-tenant where any. For instance, in Bengal, where the vendor in a sale is an occupancy raiyat, the price represents the interest of such raiyat only and does not include the value of the interest of his landlord or of the under-raiyats. The rent payable is also another factor in each case. These and other allied questions have been dealt with in connection with "Valuation of Agricultural Lands," *post*. But one point to be remembered is that the sale-price of a tenant's interest has no relevancy for the value either of his landlord's interest or of the interest of his under-tenant.

Sales represent the values only of particular interest sold.

Date of sale to be about the time of the notification under sec. 4(1)—the material date.

20. The value to be determined is the market-value at "the date of the publication of the notification under section 4(*1*)". Therefore, the date of a sale to be relied upon ought to be of about this time. If there is a long interval, it is obvious that another un-known factor comes in, viz. the change, if any, in the market-conditions between the date of

[30] See *Fink vs. Secy. of State* (1907), 34 Cal. 599, in which it is observed —"If any sale relates to a permanent subordinate interest, the capitalised value of the landlord's interest should be added" (at page 606).

the sale and the date of the notification. The date of the notification is thus usually called the "material date". Sales of dates much earlier than the "material date", give thus no proper criterion [31] : and the Courts, when discussing the application of sales, have repeatedly used the expressions "recent", "nearest in date", "very shortly before the publication of the notification", "within a few years of the acquisition" and so forth [32]. In any case, any variation in the market-conditions during the interval will have to be taken into account.

Sales before notification.

Application of a sale *after* the "material date" involves also the same question, viz. what has been the change in the market conditions in the locality regarding land-values, during the interval. Very often the acquisition scheme itself (e. g. when it is an improvement plan) puts up the land-values in the surrounding [33] and there may be speculations or even collusions as well when once the scheme has been announced as would be by a notification under section 4(*1*). Conversely, the purpose of the acquisition may adversely affect the land-values in the locality, e. g. when it is for a sewage discharge depot or the like. Sales

Sales after notification.

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[31] *Asstt. Development Officer vs. Tayub Ali* (1923), 35 Bom. L. R. 768 : *Mahomed Ismail vs. Secy. of State*, A. I. R. 1936 Lah. 599.

[32] *Collector vs. Ramchandra Harishchandra*, A. I. R. 1926 Bom. 44, 91 I. C. 300 : *Govt. of Bombay vs. Merwan Moondigar*, A. I. R. 1924 Bom. 161, 82 I. C. 796, 48 Bom. 190 : *Secy. of State vs. Manmatha Nath Dey*, A. I. R. 1926 Pat. 129, 84 I. C. 371 : *Qamar Ali vs. Collector of Barielly*, 23 I. C. 542 : *Mirchandani vs. Spl. L. A. Officer, Karachi*, A. I. R. 1927 Sind 168, 101 I. C. 269.

[33] In a case before the Calcutta Improvement Tribunal it was observed that where a large area was declared for acquisition by which a number of people would be deprived of their places of residence, lands outside the declared area must be considerably affected thereby : and that from a sale of such land in the neighbourhood *after* the material date, no reference as to the market-value of any land within the declared area at the material date could be drawn with that degree of possibility which section 11 of the Evidence Act requires ; Case No. 36 of 1915.

after the "material date" would therefore be discarded when it is proved that the values have been affected one way or the other during the interval [34], whether by reason of the notification of the acquisition or otherwise. In a Burma case such a transaction was altogether ruled out [35].

When material date may be the date of declaration under sec. 6.

21. The words "notification under section 4, sub-section (1)" in clause first, were substituted for the words—"declaration relating thereto under section 6", by section 7 of the Land Acquisition (Amendment) Act XXXVIII of 1923. Prior of this amendment, the material date for the determination of market-value, was thus the date of the declaration under section 6, and not the date of the notification under section 4(*1*). It follows that in cases where the amendment of 1923 does not apply, the material date would be the date of the declaration under section 6. This may happen where the application of the Land Acquisition Act was inducted by any local or special Act passed prior to 1923, for acquisitions for the purposes of such Act [36]. So, also where a local or special Act specifically mentions the date of the declaration under section 6 as the material date in acquisitions for its purposes [37].

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[34] *Govt. of Bombay vs. Karim Tar Mahomed* (1908) 33 Bom. 325. See also the observations in *Collector of Dacca vs. Golam Ajam Chowdhury and others*, 40 C. W. N. 1143 (at page 1147), A. I. R. 1936 Cal. 688 : *Asstt. Development Officer vs. Tayabali Allibhoy*, A. I. R. 1933 Bom. 361 : For *contra*—see *Jogesh Chandra vs. Secy. of State*, 18 C. W. N. 531, 24 I. C. 65 in which rents after the material date were considered.

[35] *Bota Taung Bazar Co. vs. Collector* (1903) 1 Bur. L. T. 138.

[36] See the principle explained in *Secy. of State vs. Hindusthan Co-operative Insurance Society* (P. C.), 59 Cal. 55.

[37] For example, article 9(3)a of the Schedule to the Calcutta Improvement Act, 1911, has the "date of publication of the declaration." Again Article 10(3)(a) of the Schedule to the United Provinces Town Improvement Act, 1919, mentions "at the date with reference to which the market-value is to be determined under that clause" i. e. clause 23(1) of the Land Acquisition Act in force in 1919.

Agreements and offers.

22. Agreements to purchase when *bona-fide* and satisfying other tests applicable to actual sales, may give an indication of the market-value : but mere offers stand on a different footing. When put forward in Land Acquisition proceedings, they can be easily arranged and would scarcely ever be *bona-fide*, and their probative value is very low [38]. So, it has also been held that evidence of offers as an index of market-value is of little importance [39], and too much importance should not be given to evidence of offers [40]. An offer, at the most, is merely an expression of opinion of the person making it, and when oral does not carry any weight [41] : and it has also been held that offers can only be proved by the evidence of the offeror himself [42]. Evidence of offers by irresponsible brokers on behalf of undisclosed principals or perhaps for their own purposes are useless [43].

Offers on behalf of Government, without prejudice, are not admissible : and on the same principle offers made by the Collector in the course of discussion with the party before award are inadmissible [44].

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[38] *Reddiar vs. Secy. of State*, 109 I. C. 11, 5 Rang. 799, A. I. R. 1928 Rang. 65.

[39] *Government of Bombay vs. Merwanji Muncherji*, 10 Bom. L. R. 907.

[40] *Mohini Mohon Banerji vs. Secy. of State*, 25 C. W. N. 1002, 67 I. C. 25. It is, however, held in this case that the position is different where the question is whether there is a market at all for a tract of land for use for a specified purpose, e. g. a brick field.

[41] *Abdul Rahim vs. Secy. of State*, A. I. R. 1926 Lah. 618, 97 I. C. 775. Also *Secy. of State vs. Sarala Devi Chowdhurani*, 79 I. C. 74, A. I. R. 1924 Lah. 548, 5 Lah. 227.

[42] *Sarala Devi Chowdhurani's* case, *Ibid.*

[43] *Ramjor Singh vs. Secy. of State*, 92 I. C. 319.

[44] The following observation by the Calcutta Improvement Tribunal, is elucidating :—

"Whatever is done or said at any stage antecedent to the making of the award is of the nature of negotiations merely and neither party can be bound by it * * * . If the Collector after further consideration of the matter is satisfied that an offer which he had made at an earlier stage of the

23. There may be events other than actual sales or agreements or offers, in which the market-value of a property might have been determined. For example, an award by the Collector or the Court in the acquisition of neighbouring lands, or a valuation by the Municipal or other authorities for the purpose of taxation, or a valuation at the time of a partition or mortgage. Such awards, or valuations are often cited, and are sometimes helpful when applied with due allowances.

(1) *Collector's awards* :—Whether accepted by the party or not such awards constitute the final considered opinion (see notes under section 11 *ante*) of the Collector regarding the market-value of the property, at the material date. When his award is accepted by the party, it attains the additional value of a completed transaction, and it has been held [45] that prices which were given by the Collector to people whose lands are acquired and who accept them, are valuable evidenc [46]. Where,

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proceedings was excessive, it would not only be open to him, but it would be his duty when he came to make the award, to give only so much as in his best judgment he considers to be the right amount of compensation to be awarded for the property acquired." (Case No. 121 of 1925, *re* 59 Bentinck Street).

[45] *Secy. of State vs. Amulya Charan*, 104 I. C. 129, A. I. R. 1927 Cal. 874 : also *Collector of Nagpur vs. Atmaram Bhagwant*, A. I. R. 1925 Nag. 292 that acceptance of Collector's award as correct valuation by neighbouring plot-owners is best evidence of the Collector's proper valuation.

[46] But still there may be circumstances which may minimise or even nullify the value of an acceptance as any indication of the proper market-value as between a willing seller and a willing buyer. For instance, the property might have been heavily mortgaged and interests might have been running so high that the party was anxious to close with the Collector as quickly as possible. Or, acceptance might have been under a misapprehension, or the party really did not take proper advice or make proper enquiry, or from his circumstances was not in a position to dispute the Collector's offer. On this last point see the observations in *Atmaram vs. Collector of Nagpur*, A. I. R. 1929 (P. C.) 92, 31 Bom. L. R. 728, 33 C. W. N. 458, where the general evidence showed how unreliable an acceptance might be. Their Lordships observed :—"It was with the utmost reluctance that most of them (i. e. who had accepted) had done so. Some were fearful of fighting the Govt., others were without funds for such a contest".

however, the Collector's award was not expressly accepted by the party, that is to say was merely acquiesced in by reason of there being no reference, the position is not clear. The following observation in the case of *Secy. of State vs. Nagendra Kumar Bose*[47] would seem to indicate that there would ordinarily be little difference :—"An accepted award was undoubtedly as good evidence as any other award by the Collector made in land acquisition proceedings against which no reference was sought under section 18 of the Land Acquisition Act, for determining the market-value of the land acquired." But still the probative value of the two can hardly be said to be the same : for there may be many circumstances for which a party may not have cared for a reference, although he did not consider the award fair enough for acceptance in writing. It is again a question of further evidence to clear up whether non-filing of reference was due to the party's having considered the Collector's award as satisfactory to him or to any other reason. In this connection the following observation by the President of the Calcutta Improvement Tribunal[48], is elucidating :—

"What makes the price paid on a private sale, or in the view which I have taken all along, the compensation paid by the Collector under an accepted award relevant evidence against a third party, is, I think, the full concurrence of two minds which are looking at the matter from opposite points of view, namely the vendor's point of view and the purchaser's point of view. Where this concurrence is wanting the individual opinion of either party to the transaction is entitled to very little weight."

(2) *Awards by the Court* :—Awards by the Court under section 26 *post*, in respect of other lands, stand on a different footing. They are judgments *in personam*, based on the balance of evidence in the case adduced by the parties. In a Bombay case[49], Mcleod J, when considering the admissibility of an

[47] 42 C. W. N. 27 (at page 30).

[48] Per Dr. S. C. Banerji in Case No. 154 of 1916.

[49] *Government of Bombay vs. Karim Tar Mahomed* (1908) 33 Bom. 325, 3 I. C. 690.

award by the High Court for the determination of the market-value, observed :—"Obviously I could not do so without considering all the evidence on which the award was founded. The award by itself is no evidence of the market-value." In the case of *Secy. of State vs. I. G. S. N. & Rly. Co. Ltd.* [50], however, the Privy Council approved the market-value which was determined by the High Court on the basis of judgments in previous land acquisition proceedings.

Municipal valuation for rates.

(3) *Municipal Valuations* :—As for Municipal valuation for the purpose of assessment of rates and taxes, see notes paragraph 31 *post*.

Municipalities sometimes acquire strips of land by private arrangement when the owner desires to build a house but the municipality would not allow it within the area of a projected widening of the road. These are called "set-back" cases. Arrangements in such cases are made with various considerations ; for instance the owner would have a better value for the rest of his land by reason of the widening of the road in front. There is also the element of anxiety on the part of the owner to develop his property[51].

Taxation valuation in India and in England.

—income tax valuation.

(4) *Taxation Valuations* :—Valuation for the purpose of Income Tax assessment may be relevant, but is not of much use in India as it relates to the income from rent only during the year for which assessment is made. Where the property is not rented, an annual value is deduced, but usually the municipal valuation is followed. Under the English Acquisition of Land etc. Act of 1919 taxation valuation is a relevant matter for consideration in land acquisition. Section 2(*2*), proviso, of that Act reads thus :—"Provided always that the arbitrator shall be entitled to consider all

[50] 36 I. A. 200, 36 Cal. 967, 10 C. L. J. 281, 14 C. W. N. 134.

[51] For all these reasons the Calcutta Improvement Tribunal has, as a rule, rejected the values settled in set-back cases as any guide for determining the market-value of other properties : Case No. 82 of 1929, re : 2/1/1 Braja Dulal Street.

returns and assessments of capital value for taxation made or acquiesced in by the claimant." This refers to returns and assessments made for the purpose of the Land Value Duties under the Finance Act 1910, and for death duty purposes ; and on this analogy "probate valuations" in India would seem to be admissible [52].

—probate valuation.

(5) *Partition valuations* :—are often looked at with suspicion, and ordinarily should not be relied upon unless supported by *data* on which such valuation was made or by the evidence of the expert who made it. These valuations aim more at giving relative values amongst the parties, and considerations of owelty money and personal factors influence them a good deal.

Partition valuation.

Similarly, the sale of an undivided share of a property is not ordinarily dependable. When purchased by another co-sharer, it may have a fancy price for special value to such co-sharer. Purchase of an undivided share by an outsider, is often of a speculative nature.

Sale of undivided share.

(6) *Mortgage valuations* :—stand on the same footing as partition-valuation. Except in the case of money advanced by an established Bank or Insurance Company, no exact valuation of the property is made. Even when an expert-valuation is taken at the time of mortgage, it has to be remembered that in such valuation the expert would take into consideration many matters which are not relevant in the case of sale. To quote from Webb— "the valuer is in a very different position if he is advising as to what sum can be safely lent upon mortgage of a property, to that when he is advising the owner as to what amount he may expect to get for the property if sold in the open market.

Mortgage valuation.

[52] In a case before the Calcutta Improvement Tribunal the President (Dr. S. C. Banerji) held that probate valuation may be taken into evidence, but must be weighed with due consideration of the fact that the word used in the Court Fees Act is "value", while what is required for land-acquisition is "market-value" : Case No. 75 of 1924, 43 etc. Bentinck Street.

In the first case, the valuer has to bear in mind that foreclosure and subsequent sale may ensue at a very inopportune moment, probably with the accompaniment of accrued interest. In the latter case, however, the owner possibly may take his time and wait until he gets a good offer from a person who can make full use of the property". There are also various other factors to consider, *vide* Chapter IV Webb—"Valuation of Real Property."

Determination of annual value.

Annual value—meaning of :

24. The object of ascertaining the "annual value" is to obtain a basic figure which may be adopted as representing the capacity which the property possesses of producing a revenue or income which may then be taken as an index to the proper value of the property itself : see para 12 *ante*. It is obviously not sufficient to find out only the gross receipts : for, certain expenses are necessary to produce and maintain these receipts. These expenses or outgoings must, therefore, be deducted from the gross receipts and the net annual value thus obtained would be the proper basis for determining what may be called the "intrinsic" value. The next stage of the process to ascertain the value of the property is to determine the number of years' purchase with which the net annual value or profit would be capitalised. Curtis puts it thus (6th Ed. page 38) :—"Find *first* the gross income of the subject to be valued : *secondly*, the necessary outgoings, and by deducting these obtain the net income : and *lastly* the capital value" on such net income.

(a) Agricultural lands.

Average annual produce from the land.

25. For agricultural lands, the gross income is obviously the value of the average yearly produce from the land, and the net annual value is this gross value *less* the cost of production and marketting. The Indian Taxation Enquiry Committee's definition of annual value is :—"the gross produce *less* cost of production including the value of the labour actually expended

by the farmer and his family, and the return for enterprise." Webb puts a method of estimating "by supposing an average tenant, and calculating the average value of the crops which he would grow over a long series of years, and deducting therefrom the expenses of working etc." This process of valuation by ascertaining the annual value of the produce is recognised by Indian Courts [1], only when other methods cannot be adopted. However, the annual value (and by way of that the capitalised value) would represent the *total value* of all right-holders including the cultivator, the Government which receives a revenue and all intermediate holders. The distribution of this total value amongst these various grades of people would be a matter of apportionment according to the *net* profit of each from the rent he gets, and the rights of the tenants as regulated by the local tenancy laws.

The full letting value.

26. Another method of ascertaining the annual value is to take the full letting value, i. e. the rack-rent which after deducting the cost of cultivation etc., leaves little or no margin of profit to the tenant. In *Secy. of State vs. Belchambers* (1905),[2] it has been observed that the full letting value i.e. the "rack-rent" may be

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[1] *Ram Sahay vs. Secy. of State* (1903), 8 C. W. N. 671, in which it has been held that when letting value of the land is not ascertainable and the selling value of the lands in the neighbourhood does not afford a reliable guide, the best course is to ascertain the annual value of the produce and then to capitalise it. See also *Bijoykanta Lahiri vs. Secy. of State*, A. I. R. 1934 Cal. 97, 58 C. L. J. 38 : *Krisna Bai vs. Secy. of State*, 57 I. C. 520, 42 All. 555 : *Parmanand vs. Secy. of State* 44 P. R. 1904 : *Biswa Ranjan vs. Secy. of State*, 11 I. C. 62.

[2] 33 Cal. 396, 3 C. L. J. 169, 10 C. W. N. 289. A side-issue which arises from valuation of land by this method is,—is not the cultivating tenant whose rent may be equivalent to rack-rent entitled to any compensation for his forcible eviction ? Take the case of an *adhiar* tenant who pays half the actual produce as rent to his landlord. If half the gross produce be taken as cost of cultivation, his rent is the rack-rent leaving no margin of what may be strictly called his "profit". But still the man was having a living with the other half of the produce, whether we put it as the value of his personal labour or in any other manner. Or, as Curtis puts it – the man

the basis of valuation instead of the value of estimated annual yield or produce. A process of finding out such a hypothetical rent, takes us back to determine the annual value of the produce as discussed in the last paragraph : for, as a matter of fact the lowest grade under-raiyat also has a margin of profit over his rent.[3]

Potentiality of better use and annual value.

27. But whether the average produce from the land or the full letting value be taken as the basis, it is not necessarily the *actual* of what is being derived from the present user of the land. For, the vendor may expect from an intending purchaser the value which the latter would obtain by a better user when such better user is a reasonable probability. For instance, the land may be capable of a better kind of crop : or of a better yield by some improvements. But, as in all cases where "potential value" is taken into consideration, the existing user would ordinarily be treated as *prima facie* the most advantageous : and in determining the annual value of agricultural land one test is whether the present user is the same as that of other similar lands in the neighbourhood. In a Punjab case [4] where out of 57 acres of agricultural land acquired, 25 acres were under rice-cultivation, and the remaining 32 acres were grass-land,—and it appeared

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was having a living from the land, and he would continue to enjoy this living if not disturbed by the acquisition. Howsoever denominated, i. e. whether as a portion of the market-value of the land or damages, he is from the fundamental principle of compensation in land acquisition, entitled to compensation.

[3] For instance, in Bengal the rent of the bottom-most under-raiyat on money-rent cannot be more than one-third of the average gross produce (sec. 48-D of the Bengal Tenancy Act). If half the value of the produce be taken as representing the cost of cultivation including the labour of the under-raiyat and his family,—it leaves a net profit to him of one-sixth of the produce. In the *metaiyare* system, the rent is usually half the value of the gross produce : and this may be taken as the utmost rack-rent. But the cost of production may not in all cases be half ; it may in circumstances be higher or lower.

[4] *Ahmedbhoy vs. Collector of Thana.* (1875) Bom. H. C., printed judgments, p. 383 quoted by Campbell in his L. A. Act, p. 88.

that the latter area had all along been used as grass-land, and in the circumstances of that part of the country it was convenient to leave grass-lands, as in the case,—it was held that the 32 acres of grass-land would be treated as grass-land, i. e. not as land of which the annual value would be on the basis of probable produce from cultivation of other crops.

Prospect of assimilation as building sites.

The most common cases are however, where agricultural lands are within an urban area, or in the proximity of an expanding town, and there is a reasonable probability within not a very distant time of their being assimilated as a building site or the like. In such circumstance it will not be proper to treat on the basis of agricultural conditions only [5].

Landlord's annual value.

28. The basis of produce or of full letting value, gives, as has already been stated, the full annual value for all grades of right-holders in the land. Agricultural lands are usually held by a tenant under a landlord (or by a series of them), and all but the bottom tenant, derive their income from the rents of their tenants. These rents, as well as the rights of the tenants, are again regulated by the Tenancy laws in force in the different provinces. So far as these landlords are concerned, their annual value is restricted to the rent they receive, with only this further prospect that a higher rent may be obtained according to these laws or that there is a chance of the tenancy lapsing to the landlord. In Land Acquisition proceedings, it is usual to take the existing rents as the gross annual value [6]

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[5] See *Atmaram vs. Collector of Nagpur* A. I. R. 1929 (P. C.) 92, 32 Bom. L. R. 728, 32 C. W. N. 458. But see also *S. M. De Souza vs. Secy. of State* 165 I. C. 585, A. I. R. 1936 Pat. 542, where it has been observed that a land used for agricultural purposes cannot be valued as building-land.

[6] The following observation by Curtis (p. 88) with reference to agricultural rent is pertinent :—"Information as to rents extracted from existing tenancy agreements must not be taken as conclusive evidence of value. *Prima facie* they may be, but the valuer must satisfy himself of their accuracy by an independent valuation". Curtis, however, is not referring here to considera-

of the landlord, and then vary the number of year's purchase according to the rights of the tenants and the prospects of future increase in the rent. The deduction to be made from the gross rents in order to obtain the net annual value or profit, would comprise in these cases, of the rent (or land-revenue) which the landlord has to pay and the cost of collection [7] :

Waste lands.

29. The method of annual value or letting value is hardly applicable to unculturable waste lands in rural areas. There is no analogy with what is called "accommodation land" in England.

(b) Urban Lands.

In urban areas annual value comprises the rent or letting value.

30. In urban areas (usually having a municipality) [8] the question of agricultural produce does not ordinarily [9] arise, and the "annual value" thus comprises the letting value or the rental profit. The method of valuation by capitalisation of "annual value" is thus commonly called the "rental method".

Annual value for Municipal assessment—how far dependable.

31. In Municipal areas, the annual value of every premises has to be determined for the purpose of assessment of municipal rates or taxes, and a record of these valuations is maintained. The principles followed are, however, regulated by the rules laid down in the Municipal Acts governing such areas, and

tions arising from rights or disabilities under the tenancy laws, which do not perhaps arise in England : but is referring to other circumstances such as "division of farms, the buildings and other condition, the distance from market and railway stations, the nature and capability of the soil and the proportion of grass-land, water supply, buildings etc."—whether the rent thus arrived at agreed with the reserved (i. e. by the agreements) rent. But similar considerations may be necessary in special circumstances in this country also.

[7] The cost of collection is usually taken at 10 per cent.

[8] Homestead blocks in villages have a distinctive feature and have been dealt with separately under heading—"valuation of lands", *post.*

[9] There are often agricultural or horticultural lands within municipal areas. They have a higher value than mere agricultural land, as there is a potentiality of their being used as building-sites sooner or later. *Atmaram vs. Collector of Nagpur*, A. I. R. 1929 (P. C.) 92, 114 I. C. 587, 33 C.W.N. 458.

when considering the Municipal annual value, care has to be taken to see how far these principles fit in with the requirements of valuation for determining the market-value as required for land acquisition purpose. It has also to be borne in mind that for Municipal purposes it is sufficient that the annual value adopted is such as may reasonably last for only the period of the assessment. But for the purpose of market-value as in an out-and-out sale the value paid hangs on the purchaser for all times to come. While on the one hand potentiality of an improved annual value (that is, profit) is an important element, on the other hand, one of the first principles with valuers for fixing the basic annual value as a business proposition, is that it is such as will be maintained for a long period, or as Curtis puts it "as will yield the interest on the investment in perpetuity". The annual value may thus, well be different [10] from that adopted for Municipal assessment. It is really the *data* on which such assessment-valuation is based, than the valuation itself, which are useful.

The rent to be such as the property is capable of yielding.

32. As has already been explained, rent which the property is capable of yielding is ordinarily the proper basis of "annual value"; but there are exceptions when the "properties connected with landed estates do not yield a *present* equivalent income" (Curtis). In this category come ill-developed or under-developed properties which are very common even in large cities in India, and also vacant lands. In the case of *Govt. vs. Doyal Mulji* (1906) 9 Bom. L. R. 99, the High Court observed that the rental principle of valuation is not a satisfactory basis to go upon where the property is not fully developed. "Rent" is, however, unquestionably the best index when the building adequately developes the land, and in fact affords, as Mr.

Exception for ill-developed or undeveloped properties.

[10] Webb in his "Valuation of Real Property" page 2, emphasises this point as one of the first things which a valuer should bear in mind, and explains how the purpose of the valuation is important, and how valuations for different purposes, of the same property, may very well differ, though to a layman it looks "little short of juggling".

Peterson[11] puts it, the only scientific method of valuation in such cases. Assuming therefore that the property in question adequately develops the land (say with a two or three-storied building), and is let out to tenants, the rent which it is fetching for the time being would ordinarily be presumed[12] to be the proper basis for determining the annual value. But the existing rent may be, for various reasons, unduly high[13] or unduly low[14] and in such cases the correct basis should be an estimated "fair rent", by which is meant such rent as a man of business may reasonably expect to get by letting the property to the best advantage in consideration of the rates and manner of letting of similar property[15] in the neighbourhood and what may be expected to be realised for a reasonably long period or in perpetuity. It is thus either the actual or the immediately prospective rent (if that is different)[16]. Although where the existing rent is low it cannot be adopted for the annual value, speculative rents on the assumption of probable rise of the market cannot be adopted either and have been discarded by the Courts; in other words, the rent to be taken should be in accordance with the existing market-conditions, and it cannot be

Rental method best for adequately developed property.

Fair rent.

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11 Manual of Land Acquisition Procedure, by J. C. K. Peterson I. C. S., 1916.

12 Calcutta Improvement Tribunal Case No. 162 of 1922 : also Bombay Tribunal of Appeal Cases Nos. 9 & 15 of 1905.

13 *Wernicke vs. Secy. of State*, 13 C. W. N. 1046, 2 I. C. 562, where a high rent was paid by the military authorities for the *temporary* use and occupation of land for a rifle range.

14 *Revenue Divisional Officer, Trichinopoly vs. Srinivas Ranga Iyengar* 1937 M. W. N. 1006—where a terminable existing lease gave a low rent, such rent would be ignored, and the property (a bunglow) to be valued as capable of better disposition by a purchaser.

15 *Krisna Bai vs. Secy. of State*, 4 All. 555, 57 I. C. 520—that valuation may be made on the basis of annual letting value of similar property. It is at any rate a good test of whether the existing rent of the property under acquisition is the fair rent.

16 *Harish Chunder Neogy vs. Secy. of State* 11 C. W. N. 875 : *Amrita Lal vs. Secy. of State* 22 I. C. 78 : *Karachi Municipality vs. Narayan Das*, 145 I. C. 795, A. I. R. 1933 Sind. 57.

assumed that it will go on increasing for ever[17]. It is often found that owing to mismanagement, minority or other incapacity of the owner, quarrels amongst co-sharers and so forth, the premises frequently remains vacant or fetches only a low rent. Conversely the existing rent may be high in the conditions at the material time ; for example, it might have been fixed at a better economic time and the tenant either by the terms of his lease or for other *special* advantages of his own, cannot vacate[18] : In such case the purchaser may, however, count on the covenanted rent provided there is sufficient security and no risk, and this too only for the period of the lease. The right course in such a case is to fix the valuation on the basis of the proper annual value or fair rent, and then make an addition for the difference of the rent. The test is what is the rate of rent (say per 100 sq. feet of floor space of corresponding floors and situation) of similar other premises generally, in the neighbourhood. To get the full value of a property, it is "the rack rental of the locality, that is to say, the highest rental payable for his land by a tenant in actual occupation" (i.e. the lowest grade tenant) which should form the basis of calculation[19].

Higher rent fixed in better economic time.

The test is the general floor space rate in the neighbourhood.

An intermediate tenant's rent (e. g. that of a lease-holder) does not afford the *full* annual value of the property : it affords a basis only for the annual value of the lessor's interest during the period of the lease. In considering leasehold rent, regard must be had whether the lease was for a considerable period and whether the amount is likely to be received for any length of time.[20]

Lease-hold rent.

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17 *Raghunath Das vs. Secy. of State*, (1905) 29 Bom. 514, per Jenkins C. J.

18 *Wernicke vs. Secy. of State*, 13 C. W. N. 1058.

19 *Fink vs. Secy. of State* (1907) 34 Cal. 599, at page 609.

20 *Swarna Munjuri Dasi vs. Secy. of State* 55 Cal. 994, A. I. R. 1928 Cal. 522, 32 C. W. N. 421, 112 I. C. 706 : *Ismailji Mohamedalli vs. Dy. Supdt., Nasik*, 141 I. C. 352, A. I. R. 1933 Bom. 37, 34 Bom. L. R. 1457.

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Abnormal rents to be disregarded.

33. Abnormal rents such as are obtained from a wine-shop[21], a hotel, a lime godown, a depot for petrol or like inflammable or dangerous materials, afford no guide for fixing the proper annual value on which the permanent investment as in a purchase, can be based. So also rent obtained by letting to prostitutes, must be disregarded for the further reasons of public policy and the fact that such rent is not realisable by legal process.

So also brothel rents.

34. Existing rents of a house which is ill-developed or under-developed or rents of a house in very bad state of repairs do not afford a correct basis for annual value on which its market-value can be determined. In a case of a house which, though otherwise adequately developed, was in such a bad state of repairs that it fetched only Rs. 25/- per month as rent, but it appeared that if properly repaired it might fetch Rs. 50/-, the Calcutta Improvement Tribunal adopted the latter as the basis and from the capitalised value deducted the cost of repairs [22]. Similar consideration may be applied when the building on the land, has its rooms and other arrangements so laid out that they are not suitable for modern requirements, but may be adapted by alteration and additional arrangements to make them suitable: a purchaser would calculate on these immediate possibilities, and an annual value on the assumption of such alteration etc. may reasonably be assumed, and the cost deducted from the capital value obtained.

Houses in bad repairs.

Houses requiring alteration of arrangements.

35. Where the land-value is high and there is demand for two or three storied buildings, but there is only a one-storied building, the property would be said to be under-developed. Similarly where the covered area is substantially less than what is available for

Under-developed properties.

[21] Calcutta Improvement Tribunal Case No. 10 of 1915.

[22] Case No. 40 of 1926 (5 Ganesh Sarkar Lane). See *Paramananda vs. Secy. of State*, 44 P. R. 1904 : *Biswa Ranjan vs. Secy. of State*, 11 I. C. 62.

building. In neither of these cases can the existing rent be said to be the annual value on which the proper market-value of the property can be calculated. In the former case an intending purchaser would calculate on the possibility of building a second or third storey on the existing one-storied building, and in the latter case, possibility of extention on the uncovered area. Assuming that these are possible, one method may be to conjecture such additions and the full rental with such additions, capitalise the latter and then deduct the cost of the additions. This method is generally discarded by Indian Courts as too hypothetical, and the method of "land-building" is preferred, treating the building either as materials or as a standing structure according to the circumstances of the particular case. (See under "Valuation of Lands" *post*).

Bustee lands.

36. *Bustees* do not adequately develop lands in towns where land-values are high and would not be justified unless built upon with suitable masonry buildings. Still, extensive *bustees* exist even in the heart of large cities. The usual practice is to let out lands at a ground-rent per cotta (excluding areas reserved for passages) to people who build light structures with roofs of tiles or corrugated iron. These are then sublet by rooms to the poorer class. The leases are rarely other than mere monthly tenancies. Legally the hut-owners are liable to be ejected on one month's notice, but it is often found that they hold on for years without much varying rents, and even sell their structures to others. Usually one or two rooms are reserved by the hut-owner for himself to live in and the rest are let out. The rooms are as a rule over-occupied, often to a dangerous extent. They afford, however, a convenient accommodation for the night to the floating population of labourers and the like from whom rent is realised per head of persons accommodated per day. Barring exceptional cases, ground-rents which a lessee can afford to pay so as to make any profit out of the room-rents, do not give any value which if capitalised, would give land-value approximating the prevailing values of vacant land

Ground-rent or room rent, ordinarily no criterion :

in the locality.[23] Cases are not rare in Calcutta where sales of vacant land give over Rs. 2,500/- per-cotta, but ground-rents of such *bustees* do not exceed Rs. 6/- or 7/- per month. Ordinarily, therefore, neither the ground-rents nor the room-rents of bustees ought to be adopted as a proper basis for annual value to be capitalised, unless there are independent tests which show that such capitalisation approximates the proper value or there are special features for which such rents may be taken as fair index of the market-value of the land.[24] *Bustees* are, however, not an inadequate development where land-value is low. In *muffussil* towns conditions differ widely, and in many places there are ordinary huts with good amount of open land, and even tanks attached, for which the proper basis would be similar to homestead sites in villages, that is to say rent can hardly be taken as the criterion.

Deducting for outgoings.

37. Having ascertained the gross annual value, the next stage for the valuer would be to make deductions for outgoings in order to arrive at the net annual value or profit. These deductions may be classified as below :—

(1) Municipal taxes ;
(2) Repairs and up-keep ;
(3) Collection charges, bad debts and vacancies ;
(4) Insurance ;
and (5) Sinking fund (for the gradual depreciation of the building).

Municipal Taxes.

38. *Municipal taxes* :—have to be deducted when the rent taken is inclusive of such taxes. The proportion depends on the rates of these taxes in the particular Municipality. In calcutta it is 19½% of the net municipal annual value. This gives about 17·5 per cent of the gross rent

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[23] *Secy. of State vs. Altaf Hussain, 53* I. C. 714, A. I. R. 1927 Cal. 827. *Manindra Chandra Nandy vs. Secy. of State,* 23 I. C. 412, 41 Cal. 967, 18 C. W. N. 884.

[24] As for where retail rents of bustees may be worked upon, see *Secy. of State vs. Belchambers,* 33 Cal. 408.

when both the owner's and occupier's shares of the taxes are paid by the owner. Where the owner does not pay the occupier's share, it is 18·75 per cent. The tax actually paid at the moment may be different from the above proportions, but it is the correct portion which must be deducted, because it is this that the buyer looks to [25]. So, where a certain rent is taken as fair for the purpose of valuation, the deduction for taxes is calculated on such rent [26] :

Repairs & up-keep.

39. *Repairs and up-keep* :—As observed by Mr. Peterson, ordinary house-owners spend as little as possible in repairs. Up-keep includes special costs incurred in maintaining the arrangements in a big house let out in parts or flats or suites of rooms. It comprises charges as for electric lift, gardens, common lights etc. It may be high in such cases, but otherwise for masonry buildings it is rarely more than 1 per cent of the gross annual rent. The percentage will be higher if the building is old and requires constant attention ; but if this element is taken into account in reducing the number of years' purchase, it will not be proper to add it in the deduction under this head. In the case of huts which require constant repairs and replacement of parts, the percentage under this head should be much higher. In the case of *Secy. of State vs. Belchambers*, 33 Cal. 408, where this element was not taken into account for calculating the number of years' purchase, a total deduction of 40 per cent was made from the gross total of retail rents from a *bustee*, as against the normal 30 per cent in case of masonry buildings under similar conditions. This gave a deduction under the head of repairs and up-keep of 11 per cent.

Collection charges.

40. *Collection charges* :—In the case of an owner of a few house-properties, actual collection charge is very little, sometimes *nil*. But for large property-owners, particularly when collection has to be made from a large number of tenants, an establishment

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[25] *Raghunath Das vs. Secy. of State* 7 Bom. L. R. 559.

[26] Case No. 114 of 1914 of the Calcutta Improvement Tribunal.

has to be maintained. Mr. Velinkar (Bombay) estimates this cost at 4 to 7½ per cent, according to the circumstances in the particular case. The provision in section 127(*a*) of the Calcutta Municipal Act 1923, assumes 10 per cent as a general rule for both items, viz. repairs and up-keep, and collection charges, vacancies etc.

Vacancies.

Vacancies :—The deduction for vacancies (and by way of these—bad debts) will depend also on the nature of the letting, whether in single tenancy or to a number of tenants, and also the class of people to whom let out and the nature of the business of such people.

Insurance-fire.

41. *Insurance* :—is rarely resorted to in this country except for certain class of European business premises, or places where combustibles or similar goods are stocked. It is usually for insurance against fire, and the rates very according to various circumstances. In England the usual rates of fire insurance for every £ 100 insured are :—

Ordinary dwelling houses...1/6d. or ·075 per cent.

Non-hazardous trades...2.s. or ·1 per cent.

Hazardous trades and dangerous neighbours [27]...15.s. to 20 s. or ·75 to 1 per cent.

Confining to the value of the building only, with which we are concerned, it is taken at 9/10ths, (the remaining 1/10th going to the plinth etc. which would be unaffected by fire) and in India, the above rates are usually calculated at ·14 to ·25 per cent of such 9-10ths value [28]. Taking ·2 per cent i. e. one rupee for every 500 rupees of such value, it will ordinarily represent about 1·5 per cent of the gross rent.

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27 Amongst dangerous neighbours are counted cinemas, theatres, cabinet makers, paint and varnish manufacturers, oil refiners, petrol stores etc. (Curtis, 6th Ed. p. 19).

28 Mr. Peterson (for Calcutta) puts it generally at ·25 per cent. Mr. Velinkar gives for Bombay—·14 to ·2 per cent.

Another item is insurance for lifts where there are electric

Lifts.

lifts. This as well as the cost of maintenance (including supervision) is usually included in the deduction for repairs and up-keep under head (2) above, as a special item.

42. *Sinking fund* :—is an important item for consideration

Sinking fund for building value.

when the rent taken is not ground-rent, but rent for accommodation provided in a building or other structure. Such building or structure is subject to natural decay, and the portion of the capitalised value which represents the value (depreciated) of the building or structure, will gradually dwindle as years roll by, and be eventually lost to the purchaser. The "sinking fund" for the purpose of valuation, is intended to provide against this loss, and means provision for a fund to replace the capital lost by the building coming to an end at a certain future date, and not a provision for a fund to build a new building on the same site to produce the same rent (see Inwood, 28th Ed. p. 16). The life of a brick-built house is usually taken at 100 years, and if, say, 30 years have elapsed, the utmost that can be counted for the future life of such a house to be in a habitable condition is 70 years. Suppose the present value (depreciated) of the house is Rs. 12,000/- and the purchaser has paid this from his investment in Govt. securities yielding 3½ per cent interest this amount may be equivalent to an annual sum of Rs. 416·2 during the next 70 years. If the gross rent in the case be Rs. 1440/- per annum, the above sum will represent 2·9 (say 3) per cent of this gross rent. The proper deduction for sinking fund in this case would thus be 3 per cent.

43. The above exposition would work out the following total

Total deductions.

of all deductions, for a building 30 years old :—

(1)	Municipal taxes	17·5%	of gross rent.
(2)	Repairs & Up-keep	1·0%	do.
(3)	Collection, Vacancies etc.	5·0%	do.
(4)	Insurance	1·5%	do.
(5)	Sinking fund	3·0%	do.
	Total	28%	do.

The practice in Courts is however to make a lump deduction for all these items together, varying generally from 25 per cent to 30 per cent according to the age and condition etc. of the building. The percentage is increased in the cases of hut-rent [29] or bazar rents. There is room for good deal of considerations under heads (3) and (4) above. As has been observed, for small property-owners, the collection charges are very small, and sometimes *nil* : and as for insurance, an ordinary buyer rarely thinks of this. As for the sinking fund, if the years' purchase is reduced on account of the age and condition of the building, no deduction for it can be made from the gross rent : for, it will mean then double deduction. Similarly if years' purchase is reduced because of any special risk of bad debts or vacancies owing to the number and class of tenants in a house, any corresponding deduction from gross rents for such special risk will not be justified, the ordinary deduction of 5 p. c. being sufficient.

Years' purchase and deductions are sometimes mixed question.

Valuation of Lands.

43. It has been explained in paragraph 10 to 13 *ante*, that the methods which have been accepted by the Courts as the recognised methods for determining the market-value of land are :—

Determination of market-value :— three recognised methods.

(*i*) comparison of sales etc. of similar other lands ;
(*ii*) capitalisation of rent or annual profit ; and
(*iii*) opinions of valuers (experts).

The last is really not an independent method : for, like the opinion of an expert in other matters, the opinion of a valuer must be supported by facts, and these facts would mainly be materials of the nature (*i*) and (*ii*) above. When not supported by such materials, the opinion of a valuer as expert, is of very little value. In the case of *Charlesworth Pilling & Co.*[1] (1901), their Lordships of the

Expert opinion.

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[29] *Secy. of State vs. Belchambers*, 33 Cal. 408.

[1] *Secy. of State vs. Charlesworth Pilling & Co.* (P. C.) 1901 App. Cas. 373, 28 I. A. 12,26 Bom. 1.

Privy Council observed that the value of inferences and conjectures made by an expert would depend upon his experience and personal sagacity : but ordinarily the Court would depend more upon positive facts of actual sales than on mere opinion of experts. In *Harish Chunder Neogy's* case[2] (1907), the Calcutta High Court held that little value could be placed on expert opinion unless it was supported by or coincided with other evidence : and in *Karim Tar Mahomed's* case[3] (1908) it was held that such other evidence need not necessarily be introduced by the expert himself but may be such as the party has otherwise adduced. The position was summed up in the case of *Merwanji Muncherji* [4] (1908) thus :—"The opinion of an expert witness is admissible in evidence not only when it rests on the personal observation and enquiry of the witness himself or on facts within his knowledge, but also when it is founded on the case as proved by other witnesses at the trial ; and under section 51 of the Evidence Act, when the opinion is admissible, the grounds upon which it is based, are also admissible. But it is settled law that an expert may not be asked purely speculative hypothetical questions having no foundation in the evidence : in other words before the expert witness is entitled to give evidence on the hypothesis, a sufficient foundation for it must be laid by due evidence *aliunde* of the facts assumed". So in the case of *Sarala Devi Chaudhurani* [5] it was observed that—"when experts give no real data in support of their opinion, the evidence is admissible but may be excluded from consideration as affording no assistance in arriving at the correct value". It follows that the opinion of an expert to be of any value must be based on definite

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[2] *Harish Chunder Neogy vs. Secy. of State* (1907), 11 C. W. N. 875.

[3] *Govt. of Bombay vs. Karim Tar Mahomed* (1908), 33 Bom. 325, 10 Bom. L. R. 660, 3 I. C. 690.

[4] *Govt. of Bombay vs. Merwanji Muncherji* (1908), 10 Bom. L. R. 907.

[5] *Secy. of State vs. Sarala Devi Chaudhurani*, A. I. R. 1924 Lah. 548, 2 Lah. 227, 79 I. C. 74. In a later case, the Lahore High Court rejected the evidence where no data were given to support the opinion : *Pribhu Dayal vs. Secy. of State*, A. I. R. 1931 Lah. 364, 135 I. C. 138.

facts and materials carefully weighed : and in a Lahore case [6] of 1926 it was held that opinion based on untested information or gossip in a casual visit, is of no value. The position was more fully explained in an earlier case [7] of the Calcutta High Court thus :—"Land is not like ordinary goods, the value of which can be fixed on inspection by a person who has no knowledge of them. Its value is the result of various factors working in different ways and degrees, and they cannot be apprehended and estimated aright off hand. An honest and useful valuation cannot be made simply by visiting the land and picking up orally some casual and untested information or gossip which may be interested or one-sided."

As in the case of any other experts, the general principle that the competency of the expert (that is, that he is possessed of the necessary qualifications) should be shown before his testimony is properly admissible [8], would apply equally in the case of valuers cited as experts ; see section 46 of the Indian Evidence Act.

44. The rental or profit basis method [viz. (*ii*) above] requires in the first place ascertainment of the basic rent or net annual value on which calculation would be made, and this has been dealt with in paragraphs 24 to 42 *ante*. The method of comparison of sales of the same or similar land, requires certain essential requisites before any such sale can be treated, and these have been dealt with in paragraphs 14 to 23 *ante*. We will now proceed to consider in what cases one or the other of these methods or both should be applied, and in what manner, for determining the market-value of land, first with regard to agricultural lands, and next with regard to urban lands.

(a) Valuation of agricultural lands.

45. The test of sales is generally readily applicable to agricultural areas where, as has been previously observed, one

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[6] *Abdur Rahim vs. Secy. of State*, A. I. R. 1926 Lah. 618, 97 I. C. 775.

[7] *Rajendra Nath Banerji vs. Secy. of State*, 32 Cal. 343.

[8] *Jarat Kumari Dassi vs. Bissessur Dutt* (1911), 39 Cal. 245.

piece of land does not differ much from another, and dis-similarities of shape and size are of little consequence. Where there are dis-similarities, for example in respect of facilities for irrigation or protection against flood, or on account of lowness or highness, proper allowances must be made, and it is not difficult to make such allowances.

Sales give only the value of the particular interest of the landlord or the tenant, which is sold.

46. But "sales" give only the value of the interest of the seller, and not the total value of all interests; and in rural areas there are varying grades of tenants with varying rights, between the cultivator in physical possession of the land and the proprietor (zemindar or talookdar) or other person holding directly under the Government. The interest of the seller in the sale, might have been the interest of an ordinary occupancy raiyat or of an intermediate holder (e. g. a tenure-holder in Bengal), or of a rent-free holder and so forth. The value or rate per acre, obtained from such a sale (other things being assumed to be equal) is the market-value of such interest only: and not of any other tenancy-interest, whether superior or inferior, nor the total value of all interests [9]. For instance, where the sale is by a raiyat with full right to transfer and without any under-raiyat below him,—and the sale-price obtained by him is say, Rs. 500/- but there are landlords of several grades above the raiyat: and the rent payable by him for the land to his immediate landlord is Rs. 10/-, the rent payable by that landlord to the zemindar is Rs. 4/-, and the land-revenue (or proportionate land-revenue) payable by the zemindar for the land is Rs. 2/-, then to get the full free-hold value, the values of the interests of the intermediate landlords and of the zemindar and Government, will have therefore to be separately calculated, and then added.

Separtae calculations for each would have thus to be added together to get the total value.

[9] This is explained in paragraphs 66 and 67 of the Bengal Land Acquisition Manual 1918. The obvious fallacy in taking the value of the tenant's interest and slicing out a portion from it for the landlords, is

In *Fink vs. Secy. of State* [10] it is observed—that if a sale relates to subordinate interest, the capitalised value of the landlord's interest should be added to get the full free-hold value. In the case of *Khetra Krishna Mitra vs. Dinendra Narayan Roy* [11] it is also explained how by ascertainment of the value of landlord's interest and tenant's interest separately the total value can be properly found out.

Value of landlord's interest.

47. The market-value of the landlord's interest may be ascertained in two ways—(1) by comparison with sales of similar interest in the neighbourhood, and (2) by capitalisation of the annual value or rental profit. To follow the first method, it would obviously be necessary that the sale must relate to some land which was held by the vendor under similar conditions, viz. with a similar raiyat under him having the same incidence of rent, and with his own rent also having the same incidence as the rent of the landlord of the land under acquisition. Such similarity is difficult to get, but it may be possible to get the years' purchase of the net rental-profit obtained from sales of tenures. The landlord's interest is, therefore, ordinarily valued by capitalising his net profit [12]. This net profit has to be worked out after deducting from the rent received, several outgoings, viz :—(1) cost of collection, bad debts etc. which are taken usually at 10 per cent, (2) the rent payable, and (3) cesses or other rates as may be payable by the land-lord in his own share. The balance gives the net profit on which years' purchase has to be calculated. Taking 20 years' purchase for this, the value of the intermediate landlord's interest in the example in the last paragraph would

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pointed out by McLeod C. J. in the case of *Gajanan vs. Asstt. Collector of Salsette* (1923), 25 Bom. L. R. 480.

[10] 34 Cal. 599.

[11] 8 C. W. N. 202

[12] *Ram Sahay Shah vs. Secy. of State* (1903), 8 C. W. N. 671 : *Secy. of State vs. Belchambers* (1905), 33 Cal. 396 : *Heysham vs. Bholanath Mullick* (1872), 11 Bom. L. R. 286.

be [13]. Rs. 96-4-0, that of the zemindar Rs. 33-7-0 and that of Govt. Rs. 50-0-0. Adding the raiyat's value of Rs. 500/-, the total, i. e. the aggregate value of all interests would be Rs. 679-11-0.

This method clashes with the principle of first determining the aggregate value by independent method.

48. This method would appear, however, not to fit in with the general principle laid down in the case of *Bombay Improvement Trust vs Jalbhoy* [14] and of *Collector of Dacca vs. Ashrof Ali*, [15] which is that the *aggregate* value of *all interests* should *first* be determined, and then distributed amongst the several persons interested as a matter of apportionment. But if values obtained in sales are adopted, such a course would, in the tenancy conditions in most parts of the

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[13] For the *intermediate landlord* :—

				Rent received ...	Rs.	10	0	0
Deduct								
Rent payable ...		4	0	0				
R. & P. W. cess ...		0	8	0				
Cost of collection at 10% ...		1	0	0				
		5	8	0	Rs.	5	8	0
					Rs.	4	18	0
Multiplied by 20, equals				... ...	Rs.	96	4	0
For the *Zamindar* :—								
				Rent received	Rs.	4	0	0
Deduct								
Land revenue ...	Rs.	2	0	0				
R. & P. W. cess ...	Rs.	0	2	0				
Cost of Collection at 10% ...	Rs.	0	8	8				
	Rs.	2	5	8	Rs.	2	5	8
					Rs.	1	10	9
Multiplied by 20, equals—					Rs.	88	7	0

For Govt :—Capitalised value of the land revenue of Rs. 2/- at 25 times, =Rs. 50/-.

[14] 38 Bom. 488.

[15] A. I. R. 1938 Cal. 812, 143 I. C. 867, 56 C. L. J. 558.

country, imply an improbable transaction in which the landlords and tenants of all grades would voluntarily combine and jointly sell all their interests. The only possibility may be in a rare chance of a reliable sale of a revenue-free or rent-free property in which the owner is also the cultivator, that is to say there is no tenant. To keep in line with the conception in these cases, the method to be followed in determining the aggregate value independently of the value of the separate interests, would be not on the basis of sales by holders of similar interest, but by ascertaining straight the intrinsic worth of the land. There would thus be two ways of approaching the question, viz.—(1) ascertaining the value of the produce from the land or the full letting value, in the manner indicated in paras 16 to 19 *ante*, and then capitalising after deducting the outgoings : or (2) by following any instance of a sale of freehold (revenue-free or rent-free) without any subordinate tenure, as by chance may be available.

Such independent method is valuation from estimated value of produce or estimated full letting value.

Test whether the two methods give approximately the same result.

49. When the valuation is made in the above manner, the amount obtained would be the full or aggregate value of all grades of interest in the land. The division of the amount amongst the several grades of landlords and tenants would then be a matter of apportionment in proportion to their respective interests. In a Madras Case [16], it has been held that an occupancy tenant would get such portion of the amount as represents the market-value of his own interest, that is, what he would get if he sold his own interest in the market, and the balance would go to the landlords [17]. The other way round might be to value the landlord's interest by capitalising his net profit from rent (that is the rent he receives *less* the rent he pays and cost

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[16] *Raja of Pithapuram vs. Revenue Divisional Officer, Coconada*, 36 M. L. J. 455, 51 I. C. 656, 42 Mad. 644.

[17] This would literally be right if the tenant's interest is considered as *jus in re aliena* : all residuary interests thus being in the landlords up to the Government.

of collection etc.) and give the occupancy cultivator the remainder. Where the latter has a full and free right of transfer, the result in either way ought to approximate: and if it does not the suspicion would be that the calculation in the one or the other of these ways has been wrong.

50. The market-value of the interests of the various classes of tenants and landlords in rural areas, vary according to the statutory rights of such tenants and also in certain cases according to the terms of the leases under which they hold. The laws regarding tenancy-rights are not uniform in all parts of India, and the principles of valuation of such tenancy interests have been discussed under "Principles of Apportionment" in section 30 *post.*

Value of aggricultural land varies according to its productivity and use.

51. (1) The value of agricultural land will vary according to the productivity of the soil, whether the basis of valuation be the annual produce or the price obtained in sales of similar land. This is an important factor to remember when the sale-price of some other land is sought to be applied, viz. whether the lands in both are approximately of the same kind. It is usual to classify agricultural lands *first* generally, as—cultivated, cultivable but not cultivated, unculturable waste, jungle and so forth. There may *next* be sub-classifications according to circumstances, as grass or straw land or land which has been made fit for special crops such as tobacco, sugar-cane and the like. So also for lands growing potato or vegetables, and plantain groves, mango-gardens and so forth.

—possibility of better produce to be taken into consideration.

(2) When valuation is made by capitalising the net annual produce from the soil, according to its present disposition, controversy often arises whether the potentiality of the land of any one class for the next more profitable class should not be taken into account and higher value awarded for such potentiality. It is the established law both in England and India, that the value of land to be awarded in compulsory acquisition is not merely the value as according to the present disposition

of the land, but as would be according to its possible disposition in the most lucrative and advantageous manner [18]. But this potential value must be based on a reasonable probability and should be such as a buyer would have an eye to, and which the seller may with good reason, demand: in other words it must not be merely speculative or impractical imagination or conjecture[19]. It follows that if, instead of capitalising on the net annual produce from the soil according to its present disposition, or on a letting value estimated on the basis of such annual produce, sales of similar lands in the neighbourhood are relied upon, the result would cover what a buyer with an eye to any reasonable prospect of more profitable utilisation, may be expected to pay; in other words it would automatically include such potential value as may be properly included in the valuation.

—but it must not be merely speculative or impractical : the question of "demand".

(3) In the English case[20] known as Thirlmere case, Grove J. observed :—

"If the land has what I may call an adventitious value, i. e. something beyond its mere agricultural or normal value, and that is a marketable value in this sense that persons wishing, for the purpose for which the land is peculiarly adaptable, to purchase that land would give a higher price for that land, then the Arbitrator has a fair right to take that into consideration : it is a matter no doubt contingent, but still it is a matter not to be ignored or put out of consideration by an Arbitrator".

English law regarding adventitious value.

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[18] *Prem Chand Burral vs. Collector of Calcutta* (1876), 2 Cal. 103 : *Collector of Poona vs. Kashinath* (1886) 10 Bom. 585 : also in re : *Munji Khetsy* (1890) 15 Bom. 279. See notes *post* under "potential value".

[19] *Rajendra Nath Banerji vs. Secy. of State* 32 Cal. 343 : *Alaul Haq vs. Secy. of State* (1909) 11 C. L. J. 393, 3 I. C. 277.

[20] *Manchester Corporation vs. Countess of Ossalinsky*, heard in Q. B. D. of the High Court on 3rd and 4th April 1888, unreported but quoted by Adkin and Lawrence, and referred to in *Lucas and Chesterfield Gas and Water Board* (1909) 1 K. B. 16 (11 Digest 127, 169) : also cited with approval in *Daya Khushal vs. Asstt. Collector, Surat* (1918) 15 Bom. L. R. 845.

But as to what value the Arbitrator should put to such contention of higher price, the question would depend on existing demand and reasonable probability of having such buyers in the market. For instance where there are several competitors for the land already in the market that is an element of value which may be taken into account [21].

Agricultural land in the proximity of an expanding town— potential value as building site.

(4) The most common cases of special adaptibility of agricultural land (waste or cultivated) are where such lands are in the proximity of an expanding town, and there is a reasonable probality of their being assimilated as building sites. In such cases the lands would have a higher value, and a valuation on the basis of their present disposition, (viz. for agriculture) or on the basis of the values of other agricultural lands without this potentiality, would not be justified [22]. The question as to the effect of the modification of section 23 (1) first, by the Calcutta Improvement Act, the United Provinces Town Improvement Act and the Calcutta Municipal Act, limiting the consideration to present disposition or user only, will be discussed later. But it may be noted here that in actual practice valuation in acquisition of lands used for cultivation or growing vegetables, on the borders of Calcutta, has been based on the potentiality of such lands for building-sites, the reasonableness of such potentiality being evidenced by private purchases of such lands, and also from purchases by land-companies for development and profiteering.

Difficulty when there is an occupancy tenant without right to erect a building.

The position, however, is not free from some difficulties when such land happens to be held by an occupancy tenant who cannot erect a building on it and yet is not liable to be evicted by his landlord so long as he pays rent. The possibility of conversion of such land to a building-site thus is a remote one and problematic. In a case, however, in which full

[21] *Sydney vs. North Eastern Rail Co.* (1914) 3 K. B. 629 (11 Digest 128, 171).

[22] *Atmaram vs. Collector of Nagpur* A. I. R. 1929 (P. C.) 92, 52 Bom. L. R. 728, 33 C. W. N. 458.

value was awarded for the land as a potential building-site, the High Court of Calcutta did not adversely criticise the valuation[23]; and in a later Full Bench case[24] of the Allahabad High Court (1933) it has been definitely held that the land should be given the full value as a potential building-site. As to the division of such amount between the raiyat and the landlord, see notes under—"Principles of Apportionment" in section 30 *post*.

Land suitable for a factory or the like,—

(5) Another class of common cases is where a higher value is claimed for agricultural or orchard lands or even waste lands,—on account of their suitability for a factory or the like. Here again the question is one of prevailing demand in the locality including demand for such industrial developments at the moment; and the principles stated in sub-para (3) above, directly apply. Sales of similar lands in the vicinity viz. their frequency in the locality and their number, and the prices obtained would obviously be a good index. When such data are absent, the mere fact that the promoters by their use of the land as a factory or the like would derive an intreased value from it, is not relevant, *vide* section 24 clause *fifthly*.

—a question of demand at the moment.

Quarries—special value.

52. Apart from the special value which land in non-urban areas may have on account of minerals or quarries, reasonable prospects of quarrying give such land also a special value; and it makes no difference that quarrying depends on restrictions by Government Rules[25]. This view was followed in the Madras case of *Raghunath Rao*[26]. One method of estimating quarry-value is

[23] *Nibash Chandra Manna vs. Bepin Behari Bose*, 53 Cal. 407, A. I. R. 1926 Cal. 846, 96 I. C. 69.

[24] *Shian Lal vs. Collector of Agra* (1933), 55 All. 897, A. I. R. 1934 All. 289.

[25] *Daya Kushul vs. Asstt. Collector, Surat* (1913) 15 Bom. L. R. 845, 38 Bom. 37, 21 I. C. 320.

[26] *Raghunath Rao vs. Secy. of State* (1919), 44 Mad. 264, 60 I. C. 187.

to capitalise the rent at which possibly the whole plot might be leased, and the Privy Council upheld the valuation by the High Court at 25 times such rent [27].

Houses in rural areas.

53. Values of houses in rural areas cannot be properly judged from the test of annual profit or possible annual rent : for, renting of houses in rural areas is practically unknown : and where rented, the rent is no guide. The method usually adopted thus is to get the land-value from the rates deducted from sales of similar homestead sites, and add to it the depreciated value of structure.

Tanks.

54. (1) Tanks in rural areas have a special value. They are a necessity, like wells, and it may be necessary to value them *first* at the rate of ordinary land and then add the cost of excavation *less* some deduction according to circumstances [28].

(2) A tank may, again, be the source of irrigation to fields around. If all these fields are not acquired, compensation for damages would be justly claimed. The owners and occupiers of these fields are persons interested in the tank acquired. Similarly, a tank within the homestead areas in the rural country, may be the receptacle for the drainage of the adjoining habitations, and the disturbance of such drainage by acquisition of the tank may result in inconvenience and insanitation from water-logging. Damages would be justly claimable for them as persons interested in the tank acquired.

Beels & Jheels—in rural areas.

(3) *Beels* and *Jheels* in rural areas may be valuable for fishery or may not be. In the latter case, they have a potential value for fishery. Capitalisation of annual value may be one method of valuing them : but in most cases, they may have to be valued from general impressions as in the case of waste and unprofitable lands.

[27] *Secy. of State vs. Shanmugaraya Mudaliar* (1893) 16 Mad. 369, 20 I. A. 80.

[28] Compare valuation of tanks in towns, where lands are valued at high rates as building sites, and tanks, being unsuitable for building are valued at rates considerably less than the rates for firm building sites.

(4) Fishery cannot be acquired apart from the land over which it exists, nor can the land be acquired without the fishery over it [see notes under section 3(*a*) *ante*]. When the land underneath is acquired, fishery becomes part of the "land" as defined in this Act. A lessee of a fishery is in the same position as an agricultural tenant [29], and his compensation would be determined by capitalising his loss during the unexpired period of his lease. His annual profit, after deducting his expenses (not the rent) when capitalised would give the full value of the land with the fishery. For his own profit, the rent will have to be deducted, and the capitalised value of the balance for the unexpired period of his lease would represent the value of his interest, and the remainder —the value of the landlord's interest.

Fishery.

(5) Fish however, as a movable commodity, is not a subject of land-acquisition, and cannot be acquired. The lessee would be entitled to remove the fish.

Fish—cannot be acquired.

(6) Orchards or garden-lands may have to be valued as a potential building-site, when there is a reasonable probability of their conversion to building purposes. Even otherwise, such land has a higher value than agricultural land: and it is not the correct method to value it as ordinary agricultural land and then add the value of the trees. The soil and the trees in such case cannot be valued separately, and the proper method is to take the annual profit of the orchard and then capitalise it at the proper years' purchase [30]. When this is done, the value of the trees cannot, of course, be further added, for it would be

Garden land—orchard.

[29] *Narain Chandra Boral vs. Secy. of State* (1900), 28 Cal. 152, 5 C. W. N. 849.

[30] *Elias M. Cohen vs. Secy. of State*, 43 I. C. 17, 2 Pat. L. J. 615. As for the years' purchase, 15 years were taken in this case. In the case of *Rajammal vs. Head Quarters Dy. Collector, Vellore*, 25 I. C. 893, twenty years' purchase was allowed in the case of a mango garden: while in the case of *Shanmugha Velayudha Mudaliar vs. Collector of Tanjore*, A. I. R. 1926 Mad. 945, 93 I. C. 639, ten years' purchase was assessed for cocoanut topes.

already included in the valuation. The exception is where there are non-yielding trees producing no profit from fruits. In such case, the value of such non-yielding trees would have to be added [31]. This method of capitalisation does not, of course, rule out the application of sales of similar lands in the vicinity when available.

Waste land.

(7) Waste and apparently unporfitable lands cannot be valued on the basis of any estimation of annual profit. When adjacent or close to houses or village-sites, they have value almost as good as homestead lands. Sales of similar lands afford a dependable guide.

As for other kinds of waste lands or jungles, though they do not yield any profit, it cannot be said that they can be taken away without any compensation. They would have a considerably lower value than cultivated lands and this will depend upon circumstances.

(b) Valuation of urban lands.

Lands in town—valuable as building-sites.

55. Lands in urban areas are valuable for the reason that they provide accommodation for the residence of people who congregate in such areas, and for offices, shops and places of business etc. In other words they are valuable mainly as building-sites. Where the land is properly developed with a building or other structure built on it, and is let out to tenants, the rent derived (or rather the "fair rent" derivable) gives *prima facie* an index of the market-value of the property. But as has been explained in paragraphs 32 to 36, *ante*, where the building does not properly develop the land, the rent does not always give a correct index of the value of the property. Similarly where it is altogether bare land, its rent as such may be insignificant: but when built upon with a suitable structure, it is, as a rule, capable of yielding a good annual profit. These and similar other factors which regulate

Matters for consideration summarised.

[31] *Shanmugha Velayudha Mudaliar vs. Collector of Tanjore*, (ibid).

the values of lands in towns, are usually reflected in transactions of sales, and afford one test whether any such transaction is *bonafide* in the sense that it may be adopted as indicative of the proper market-value. It has also been observed (*vide* para 17 *ante*) that land-values in towns often vary widely even at short distances, and situation, shape, size, depth, road-frontage etc. are of considerable importance. A process of de-valuation for obtaining the "bare land"-value (where a sale which is sought to be relied upon comprises land and structures) or of deductions where such land is of different shape or size, is often involved in most cases of valuation on the basis of neighbouring sales.

Some illustrations

56. To explain all these, and how properties with proper development, ill-development or under-development are valued for compensation in land acquisition, a few examples will be illustrative :—

Illustration (1) :—Area 4 cottas, fully and suitably developed with a newly-built two storied building covering 1900 sq. ft., Rent Rs. 160/- per month inclusive of taxes. Building valued at Rs. 17,000/-. Land-value deduced from sales of similar land Rs. 2,000/- per cotta.

On rental, with 25% deduction for outgoings for taxes, repairs and vacancies and 5½ per cent security, the value works out to Rs. 26,182/-.

By land-building method the value is for land 4 × Rs. 2,000/- = Rs. 8,000/-, and for building Rs. 17,000/-, total Rs. 25,000/-.

Illustration (2) :—Same as above, except that the building is only one-storied but covering the same area of 1900 sq. ft. and capable of a 2nd storey. Rent Rs. 70/- per month. Building valued at Rs. 9,500/-.

On the basis of the rent with the existing capacity of the building, the value calculated with the same deductions and years' purchase, would be Rs. 11,454/-.

By land-building method, the value is Rs. 8,000/- *plus* Rs. 9,500/- = Rs. 17,500/-.

In the first illustration the results obtained by the two methods differ by Rs. 1,000/-, and this would represent what may be called the "value of enterprise", viz. the enterprise of

finding capital and building the house. The proper value of the property with the finished building would thus be the higher figure viz. Rs. 26,182/-.

In the second illustration it will obviously be wrong to take Rs. 11,454/- as the proper value ; for, a reasonable buyer would calculate on the capacity of the property of yielding a higher income when a 2nd storey is built upon it. By spending a further sum of Rs. 8,000/- for the 2nd storey, he would get the same value as in the first illustration ; and the seller may reasonably demand Rs. 17,500/-. The purchasers' total outlay with the addition of a second storey, would be Rs. 25,500/-.

In the first illustration, the land is adequately developed [1] both laterally and vertically ; and in the second illustration it is under-developed vertically, but is fully developed laterally. We will now have illustrations where there is lateral under-development.

Illustration (3) :—If in illustration (1) the built area is only 1200 sq. ft., (but so placed that further building on 700 sq. ft. is not hampered), the value of the building is Rs. 11,700/-, and the rent Rs. 120/- per month ; then, on the basis of the rent, with the same deductions and years' purchase the value would be Rs. 19,637/-, and by the land-building method Rs. 8,000/- *plus* Rs. 11,700/- = Rs. 19,700/-.

Illustration (4) :—If in illustration (3), the building also is one-storied (but capable of a 2nd storey on it), the value of the building Rs. 6,500/-, and the rent Rs 50/-, then, on the basis of the rent, the value would be Rs. 8,182/- only ; and by the land-building method Rs. 8,000/- *plus* Rs. 6,500/- = Rs. 14,500/-.

In the 3rd. illustration the results by either method approximate very close. The property is capable of further development laterally and if the outlay necessary for such addition be estimated at Rs. 6,300/-, by spending this amount i. e. with a total outlay of Rs. 26,000/-, the purchaser would get a property of the same value as in illustration (1).

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[1] 1900 sq. ft. leaves one-third open space—the usual requirement under the municipal regulation in Calcutta. A two-storied building may be taken as normal vertical development where land-value is Rs. 2,000/- per cotta.

In the 4th illustration Rs. 8,182/- would obviously not be the correct market-value of the property. A purchaser may reasonably count on as much ultimate return on his outlay as in illustration (1) by making the additions with a further expense of Rs. 11,500/-. He may however say, and with good reason, that this implies a further enterprise by him on building, costing Rs. 11,500/- as against the value of the existing building of Rs. 6,500/- only. To allow for the "value of the enterprise", the proper market-value should be somewhat less than Rs. 14,500/-. This comprises the loss of interest for the period of construction and also possible loss of rent for disturbance of tenant. In this case the proper value may thus be about Rs. 14,000/-.

In the 2nd. illustration it has been assumed that the existing one-storied building is capable of a 2nd. storey. But if from its construction it is not so capable, then a purchaser would either have to be content for all times to come with the existing rental profit, and the utmost he may be justified to pay is Rs. 10,000/- ; or, he may calculate on the land-value (i. e. Rs. 8000/-) and the value of the existing structure as "break-up materials".

Similarly, if in illustration (4), the building is not capable of a 2nd, storey, a purchaser would not pay more than the land-value and the value of the structure as break-up materials.

It follows that if there was a *bustee* (see para 30 *ante*) on the above land, the *bustee* should be taken at its value as break-up materials [2] the land being taken at its full value of Rs. 2,000/- per cotta i. e. a value which a purchaser may be expected to pay only when he is left free to develop the land to full advantage, e. g. with a two-storied building. The rack-rent (i. e. the rent from the room-tenants) may be high, but it will be remembered that in view of the nature of these room-

[2] Where the *bustee* belongs to a tenant holding on ground rent, the Calcutta Improvement Tribunal awards its value as standing structure to the tenant, and gives also full land-value to the landlord : Case No. 89 of 1926 re : 56 Prinsep Street. But it may be noted that a private purchaser buying from the owner of the land, would calculate his loss in proceedings to eject the tenant, and would not pay the full land-value as for vacant land.

tenancies, the comparatively shorter life of such structures and higher recurring expenses for maintenance, a large deduction and a lesser years' purchase would have to be taken if such rent is taken as the basis [3].

57. In the simple illustrations given above, it is assumed that the building on the land is a newly built one for valuing which as a standing structure no depreciation would be deducted from the prime cost. If in illustration (1), the building is 30 years old and it is sought to apply the rental method, the deductions will have to be increased on the ground of repairs because an old building costs more on repairs. A further addition to the deductions would be made for "sinking fund" (vide para 37 *ante*) or in the alternative (as is usually done) a lesser years' purchase (say 16⅔rds) taken. The practice usually is to adopt the latter alternative, which in this case would mean a deduction of 30 p. c. and security 6%, giving a value (on gross rent of Rs. 160/- a month) of Rs. 22,400/-. By the land-building method taking 20 p. c. as depreciation of the building in 30 years, the value would be Rs. 8,000/- (land) *plus* Rs. 13,600/-, total Rs. 21, 600/-.

In the 2nd. illustration, the value by the land-building method would be Rs. 8,000/- (land) *plus* Rs. 7,600/-. If a purchaser calculated on getting a full rental of Rs. 160/- per month and the full value of Rs. 22,400/- as above, by building a 2nd. storey, he will have to spend about Rs. 7,500/- for such additional building. If he pays Rs. 15,600/- for the land with the one-storied building existing, his total outlay would be Rs. 23,100/-, besides the loss in what has been called before "value of enterprise". The utmost which he can therefore pay is Rs. 15,000/-.

58. A building may be an ill-development of the property from the "rental"-point of view in other ways : for example in a locality where the road-front rooms have a special value for shops yielding a high rent, but the road-front rooms of the

[3] In *Secy. of State vs. Belchambers* 33 Cal. 896, 10 C. W. N. 289, 40 p.c was deducted but 20 years' purchase was taken.

premises are not suitably designed for such shops. Here, if the defect can be cured by necessary additions and alterations, a buyer may take this into account and calculate on the probable rent after such additions and alterations, deduce the capital value from such rental and then deduct from the result the cost of these additional works. Similar would be the case, when a house may need alterations to suit up-to-date requirements, or requirements which, when done, would command the proper rent. Analogous is the case of a house which is not fetching proper rent because it is in a bad state of repairs. In such a case where the house in its bad state of repairs was yielding only a rent of Rs. 25/- per month but it appeared that if the necessary repairs were done, it would fetch Rs. 50/-, the Calcutta Improvement Tribunal valued the property by capitalising on the lattter rent and then deducted the estimated cost of the repairs from the result [4].

59. If in illustration (1) the land be vacant land, then if dependable sales of similar vacant lands with similar advantages etc., be available the value obtained from such sales may be easily applied to it. But if such sales are of lands with a building on it, valuers in India usually analyse such sales and deduce a value for vacant land which is then applied to the land in question. The process is the reverse of what has been indicated in illustrations (1) to (4), and care has to be taken in each case to ensure that the value obtained is a value of vacant land with full scope of proper development as the land under acquisition. The method has often been adversely criticised on the same grounds as are argued against the land-building method of valuation : viz. that unless carefully handled it verges on the danger zone of confusing "cost of production" with the "value of the thing produced" and Courts have often to face varying (sometimes widely) results deduced by different valuers. All the various considerations and tests mentioned in the four illustrations above and of allied matters, which may arise in

Case no. 40 of 1926, re. Pr. no. 5 Ganesh Sarker Lane.

a particular case would, therefore, require to be closely scrutinised in every case.

60. The importance of such scrutiny is emphasised in Curtis's Valuation of Land and Houses (6th Ed : p. 98), where it is observed with reference to building sites, that—"site-value is not arrived at by comparison of area with another adjacent site previously sold, unless the valuer knows *the circumstances of each to be comparable*". He then proceeds to explain his independent method of valuing a building site (i. e. vacant land) thus :—"The valuation is arrived at by surveying the site, deciding the best method of developing it, i. e. by erection of shops, offices, flats, factories, etc., as the case may be, and after consideration of the rentals likely to be derived from the buildings, deciding the ground-rent which the developer could afford to pay".

Where the developer proposes to purchase the land instead of taking it on a ground-rent the same process would be followed for deciding what land-value he could afford to pay. He then proceeds to illustrate the method by examples, including in his deductions a percentage for the speculator's risks and profit. The method may be explained as below with reference to a piece of land 4 cottas in area as in illustration (1) but without any building on it :—

Illustration (5) :—Vacant land, area 4 cottas, proper development—a two-storied building as in illustration (1) : cost of constructing the building—Rs. 17,000/- : expected rent—Rs. 160/- per month.

Value when developed with the building, capitalising the rent as in illustration (1)—	Rs. 25,182.
Deduct cost of constructing the building	Rs. 17,000.
Deduct value of enterprise at 6% of the above cost	Rs. 1,020.
Balance which may be paid for land	Rs. 8,162.

An independent calculation in this way is a good test of the correctness of the result obtained by the process explained in the last paragraph. In fact a purchaser who does not want to have implicit faith in what the owner of a neighbouring plot may have paid, would, when buying a vacant plot, make a mental calculation (however rough) on this line, viz. what would be the return on his total outlay if he pays so much for land and then so much for erecting a building on it. Although the method assumes a hypothetical building on it, it is really not a scheme such as is meant by what are called "hypothetical building schemes." Land gets value from the income it yields or is capable of yielding. A piece of agricultural land would have value according to the income derivable when it is cultivated (with good husbandry) and crops are grown on it; similarly a piece of town-land gets value according to the income derivable when it is developed with a building (properly built) and rents are obtained.

Valuation by belting.

61. It is rare, if ever, to find two plots of land in a town, even on the same road, so exactly similar in situation, size, road-frontage, depth etc. as to make the site-value as a whole (or rate per cotta on the whole) of one plot applicable to the other. Road-front land to a certain depth according to the general disposition of houses on the road, has always a higher value than beyond that depth [5]. Where the road-front land has a shop-value, the difference is greater. Again a portion of the land may be obstructed from the road-frontage by another man's property. These and similar differences, have led valuers to evolve, for convenience of application, the convention of what is called "belting." In Calcutta the present day residential demand from middle-class people is for plots of about 50 ft. road frontage and about 90 to 100 ft. depth or 40 to 45 feet road-frontage and about 80 feet depth, when situated on a 40 feet wide road. The older type houses

[5] In many parts of England, the custom is to price the land at a rate per foot of the frontage alongside the road : and "the price varies according to the position and locality, depth of plot etc". Curtis's Valuation of Land and Houses, 6th. Ed. p. 98.

of this class on narrower roads have usually 60 feet depth or even 45 feet. In the case of many old houses, tiny sub-houses, sometimes with one cotta of land or even less, have sprang up due to partition and other reasons. The houses are built tight, sometimes dangerously insanitary. Higher class houses and houses in European quarters, are usually provided with lawns and gardens and the normal depths are 150 feet to 200 feet. The convention evolved by valuers is that the depth of the first or road-front belt is first determined according to the general disposition of houses on the particular road [6] : the second belt is taken with a depth of 50 per cent more than the first belt, and the third belt is taken similarly with a depth of 50 per cent more than the second belt. If *one* be taken as the value of the first belt, then *two-thirds* are taken for the second belt and *half* for the third belt. "Recessed lands" i. e. lands not lying between the perpendiculars from the road-frontage, are taken at one-fourth less than their otherwise belt-values. Where, therefore, there is a rectangular plot with a road-frontage of say 80 feet and depth 285 feet, and "60 feet" is taken as the proper depth of the first belt, then if Rs. 3,000/- per cotta be the value of the first belt area, that of the second belt area would be Rs. 2,000/- and the third belt Rs. 1,500/-. If there be "recessed lands" in the second belt i. e. between 60 and 150 feet from the road, such land will be valued at one-fourth less than Rs. 2,000/-, i. e. at Rs. 1,500/- per cotta. Similarly the recessed lands between 150 and 285 feet from the road will be valued at one-fourth less than Rs. 1,500/- i. e. at Rs. 1,125/- per cotta [7]. It is, however, to be

[6] In *Govt. of Bombay vs. Karim Tar Mahomed*, 33 Bom. 325, 10 Bom. L. R. 660 it was observed,—"When determining the value of frontage land the depth is a question of supreme importance. What is a suitable depth must primarily depend on the character of the buildings in the locality."

[7] "In land acquisition or improvement schemes in and near about Calcutta land is generally divided into blocks facing some particular street or road or lane, and each block is divided into three belts, the first to a depth of 60 feet or so on the road frontage, the second to a depth of 150 feet thereafter and the third consisting of all lands behind, and the relative values of the three belts are fixed in the proportion of 100, 66.6 and 50." *Nitya Gopal Sen Poddar vs. Secy. of State*, 59 Cal. 921, A. I. R. 1933 Cal. 25, 141 I.C. 673.

remembered that these represent only the proportions of the values of the second and third belt lands as *attached* with the front belt. They do not give any independant value of these lands taken separately, or as *detachcd* from the front belt land.

Belting method sometimes criticised as artificial.

This method, called "belting", has sometimes been adversely criticised as 'artificial' [8] : but if it is considered as a convention evolved by expert valuers from their experience of analysis of rents and values of lands of such varying depths, it certainly has great value [9]. In fact, valuers almost as a rule adopt this method wherever possible, and the Calcutta Improvement Tribunal finds this a convenient method for practical application.

Nevertheless "belting" is a mere convention and it will be hardly right to carry the convention to strict application as a purely mathematical rule. For instance, where proper first belt depth is taken as 60 feet, parties in a private transaction would not make any difference if the depth is, say 65 feet. Again it does not follow that value increases as depth decreases. For instance, in a residential area, if a plot of land has a depth of only

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[8] In the Case of *Nitya Gopal Sen*, ibid,—it is observed, "It (belting) is a highly artificial system and cannot be resorted to as a hard and fast rule." In *Secy. of State vs. I. G. S. N. Co.*, 36 Cal. 967, 10 C. L. J. 281, 14 C. W. N. 184—the High Court discarded the mode of valuation by division into belts as artificial & not affording always a reliable guide, and the Privy Council affirmed this view.

[9] The system was recognised generally in the early case of *Prem Chand Burral vs. Collector of Calcutta*, 2 Cal. 103, where the front land was valued at Rs. 1000/- per Cotta and the back land at Rs. 600/- per Cotta, that is, at about two-thirds. In *Lala Narsingh Das vs. Secy. of State*, A. I. R. 1925 P. C. 91, 6 Lah. 69, 29 C. W. N. 822, 86 I. C. 556, where the value of the rear land had been ascertained from a sale, the Privy Council approved the procedure adopted by the High Court of Lahore, of valuing the front land at an increased proportion by addition to the value of the rear land. In *Nitya Gopal Sen vs. Secy. of State*, 59 Cal. 921 their Lordships observed—"If data are available showing the proportion at which the value of land diminished, accordingly as it is situated at a particular distance from a main road or thoroughfare, the system would be perfectly scientific."

20 feet, it is almost an unbuildable site. Short depths, however, have generally a very high value in shop areas. In the case of *Alaul Haq vs. Secy. of State,* 11 C. L. J. 393, the front land was valued at an exceptionally high rate, as land fitted for the erection of shops, the back portion was valued at only one-fifth of that rate, because it could be used only for an entirely different and less profitable purpose. In *Guru Das Kundu Chowdhury vs. Secy. of State*, 18 C. L. J. 244, the back land was valued at one-half of the frontage land, and their Lordships observed, "It is difficult to lay down in these cases any hard and fast rule as to what is the relative proportion of value as between the back land and the frontage land, but it is at least reasonable in seeking to fix that proportion to bear in mind how far the land stands back from the road." In *Govt. of Bombay vs. Karim Tar Md.,* 33 Bom. 325, the Bombay High Court rightly observed, "It cannot be taken as an inflexible rule that back land is worth half the front land." See also, *Raghu Nath Das vs. Collector of Dacca,* 11 C. L. J. 612 and *Collector of Poona vs. Kashinath,* 10 Bom. 585.

Importance of frontage.

62. Depth again, is not the only criterion ; the amount of road frontage is very important. A frontage of 36 feet is not quite bad for an ordinary residential house, but a frontage of 50 feet would be substantially better and give a higher value. A frontage of 20 feet only is unsuitable for a good building.

63. All the matters enumerated in the last paragraph have therefore to be carefully weighed when it is sought to apply the site-value of another piece of land deduced from its sale-price or its rent. Other matters which arise are :—

Allowances for shape and area (largeness).

(1) *Largeness* :—Allowances for shape would in most cases be automatically covered by the belting method, if recessed lands are properly marked. But it is usual to make a deduction for relative largeness of area, "relative" with reference to the area of the premises from the sales of which the value is

deduced. The idea is that there is a more restricted market[10] for large properties than for the small ones ; or it may be argued that there is always a difference between "wholesale" and "retail" sales. But the theory connot be of universal application. In localities with high class residential houses, the demand is for land with fairly large area to allow a proper house with lawns and gardens. The question depends on the demand in the locality and the nature of the houses in it. In business areas, a small strip of road-side land fetches a comparatively very high value. These and similar matters have to be considered in determining what deduction or addition would be proper to account for largeness or smallness of the area of the premises in question[11].

Return frontage or additional access—effect of.

(2) *Return frontage* :—If the basic rate (as from a sale or otherwise) be for land with single road-frontage, question of what should be the additional value if the land under acquisition has a return-frontage (or *vice versa*), that is to say if it has another road on the side also or at its back, would arise. For a return frontage on another equal road along a side, ordinarily 10 to 20 per cent extra is allowed in Calcutta ; but if that road be inferior, a lesser addition is made : while if it is superior, the valuation would be made on the basis of the values on the superior road.

Return passage—a sewered ditch or a common passage.

Where the return passage is a mere sewered ditch or a common (private) passage, the addition is usually 2 to 5 per cent according to circumstances.

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[10] In *Harish Chunder Neogy vs. Secy. of State* 11 C. W. N. 878, it is observed :—"A further deduction should be made for the reason that the total area is larger, and the larger the area the smaller is the demand and consequently the market-value."

[11] No hard and fast rule of percentage of deduction can be laid. In a case where an area of 68 cottas was valued by the application of the belting method on the basis of sales of 9 and 10 cottas of land, the Calcutta Improvement Tribunal allowed a deduction of 7½ per cent (Case No. 48 of 1928, Pr 872 Upper Chitpore Road). Similarly where an area of 22 bighas was valued on the basis of sales of 24 cottas or so, a deduction of 10 per cent was made for largeness, (Case No. 118 of 1931, Pr. 108 Bagmari Road).

Besides the advantages of better light, ventilation and access, return frontages afford a special advantage for building purposes. If the frontage is a long one side, the owner is not required to keep off 4 feet of space along that side as otherwise required by the Municipal regulations, that is to say he may utilise this 4 ft. for his building purposes if he can otherwise keep the minimum proportion of open-space, which is usually one-third. Similarly if he has this return frontage at the back, he is not required to keep 10 feet or 14 feet as back space, but can build up to the edge of that road.

Advantage of a return frontage analysed.

In shop-areas, these return frontages or additional accesses have a special value. Ordinarily the front 20 or 30 feet are used for shops, and the back area is used for godown or residential purposes. If there be no second access to the back area, access has to be provided through the shop-belt, that is to say to the loss of so much floor space for letting to shops. If even 5 feet be lost to a depth of 20 feet. 100 sq. feet of floor space or a rent of Rs. 20/- or Rs. 25/- would be lost. This, when capitalised, would give a figure which will justify a pretty high percentage of addition to the otherwise proper value of the property, particularly when that property is a small one. The percentage will be lower if the property is bigger.

Same in shop areas.

(3) *Position and surroundings* :—Another important question which arises when applying the sale-price of the land of one premises to another is the question of position or proximity to good or bad surroundings. If, for instance, the premises of which the sale is relied upon (let us call it 'P') is in the midst of or in close proximity to a low class *bustee* or brothels, while the land under acquisition (let us call it 'Q') is free from these, then 'Q' should have a higher rate of land-value ; and *vice-versa*. A considerable amount of judgment and discretion is necessary from impression on local inspection, aided where available, by the opinion of experts.

Position and proximity to good or bad neighbourhood.

Same considerations apply where either 'P' or 'Q' is within or in proximity to a greater business locality or a locality with higher values. A sale with dissimilarity of this latter character should however, ordinarily be ruled out as not giving a proper index for the valuation of the other property. Attempts to work out a percentage of allowance either for addition or deduction, are only likely to lead to imaginary assumptions or vague expressions of opinion. One good test, however, is the relative incidence of rent, say per 100 square feet of floor space.

Deduction for tank-land.

(4) *Tank and low land* :—Then again 'Q' may be a tank, 'P' may be quite good firm land. To treat 'Q' as a building site, presupposes that the tank must be filled up and time allowed for consolidation so as to bring it in level with the condition and value of 'P'. The time required for such consolidation when the tank is filled up with good earth is orinarily taken at ten years, and the present value of freshly filled-up tank-land is taken at 60 to 66 per cent of firm land. The cost of filling depends on the depth of the tank, facilities for carrying earth and the local rates. The Calcutta Improvement Tribunal takes generally half the firm land rates for tank-land, and two-thirds for freshly filled up tank-lands. It would seem at first sight that this convention is liberal in localities where land-value is low while it is harsh where the land-value is high. On the other hand, it has to be considered that when land-value is low a one-storied building or even a hut may be a sufficient development to justify the land-value while where the land-value is high a proper development, as is possible with good firm land, presupposes buildings with three or more stories. It is however, always better to calculate the cost of filling and the allowances for consolidation, before a definite proportion is adopted, particularly in cases of lands of high value. The same observations apply *mutatis mutandis* to cases of low lands which require raising before they are fit for building.

Low lands.

Years' Purchase.

Number of years' purchase :

64. Where the rental method is applied (whether for the valuation of the land under acquisition or for testing the sale-prices of other properties) one important question is the determination of the number of years' purchase which is to be taken to capitalise the net annual value or rental profit of the property. Sales of rented houses (best when such houses are adequately developed) of a similar nature in the locality, would obviously give a good index of the years' purchase obtained in the existing market-conditions. The valuer should, however, get himself well-posted with information regarding such sales not only in the particular locality but also in different localities of the town, as well as of the money-market (values of Govt. securities etc.), so that he may then apply his judgment and experience for fixing the apropriate years' purchase for the property in question. Curtis repeatedly emphasises the necessity of all these informations for a valuer before he can pose as an expert. Years' purchase means what is the percentage of return or interest the purchaser would derive from his investment; for instance, 20 year's purchase on the net rental profit means 5 per cent return : so 16⅔ years' purchase means 6 per cent return.

Deduced from sale prices of rented properties.

Relation to value of consols in England.

65. In England, the yields from consols are taken as index figures, and English authorities try to ascertain the sensitiveness of land-market with reference to the value of consols at the time. Webb in his "Valuation of Real Property" works out from the sale-prices and ground-rents of transactions spreading over a series of years, a result which shows that the yield from ground-rent (net) is about 1 to 1½ per cent greater than that from consols. Corresponding to consols are Govt.

Calculation by Webb with reference to ground-rent.

securities [12] in India. When these at 3½ per cent interest sell at par, according to Webb's calculation, the years' purchase on the net annual value based on ground-rent, should yield 4½ to 4¾ per cent and the number of years' to be taken for capitalisation would be about 21.

Not so applicable to Indian conditions.

But banking habits or investments in Govt. securities are not prevalent in this country to the extent they are in England, and land market is not as sensitive to the values of bank-investments or Govt. securities as can be assumed by English authorities. People in India do not feel less secure in house-property than in such investments, particularly when the amounts are small, that is to say in case of small properties. The Courts in India have thus generally taken a longer years' purchsse than indicated above by English authorities; and this would seem to be justified not only by the above reasons, but also by the actual results evidenced from sales of landed property in general. In a case before the Calcutta High Court, the ground-rent of *bustee* lands in a town was capitalised at 25 years' purchase [13]. This was in 1906, when the G. P. notes yield 3·6 per cent. So also 25 years' purchase on ground-rent was taken in the recent case of *Bejoy Kanta Lahiri vs. Secy. of State* (1934) 58 C. L. J. 38, when Govt. security yielded 3·9 per cent. These meant taking the same

Hence the views of Indian Courts-re: years' purchase on net ground-rent.

Viz. 20 to 25 years' or at par with Govt. securities.

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[12] The following statement gives the value of 3½ per cent Govt. Paper, in April for various years from 1915 to 1937 :—

Year	*Value*	*Yield per cent*	*Year*	*Value*	*Yield per cent*
1915	92.0	3.8	1930	68-14	5.1
1920	59.0	5.9	1931	63-0	5.5
1921	56.9	6.2	1932	61-3	5.7
1922	45.3	6.4	1933	83-4	4.0
1923	61.0	5.7	1934	89-7	3.9
1924	67-0	5.2	1935	96-3 (average)	3.6
1925	67-14	5.2	1936	99-15 ,,	3.5
1926	74-6	4.7	1937	98-4 ,,	3.8
1928	75-6	4.6	1938	98-6 ,,	3.7
1929	71-5	4.9			

[13] *Harish Chunder Neogy vs. Secy. of State* 11 C. W. N. 878.

return as from Govt. securities. In the case of *Tulshi Makhania vs. Secy. of State*, (1909) 14 C. W. N. 80, similar land-rent was capitalised at 20 years' purchase. But variations have obviously to be made for the circumstances of each case. The following observation was made by the Calcutta High Court in the case of *Heysham vs. Bholanath* 11. B. L. R. 236 as early as 1872 :—

Variations for special circumstances.

"Every case must depend on its own circumstances, on the evidence given, and the nature of the property. The number of years' purchase, which it would be right to allow with regard to one sort of property, might not be fair allowance for other kind of property, and we wish to guard ourselves against being understood as laying down any rule as to the number of years' purchase which ought to be allowed".

In the case of *Govt. of Bombay vs. Merwanji Muncherji* (1908) 10 Bom. L. R. 907 it was observed that "in capitalisation of ground-rent in no case should more than 20 years' purchase be allowed ; and more than 16⅔rds years' purchase should not be allowed in the case of unsecured ground-rent". This would be a too stringent rule, hardly justifiable unless for special circumstances in the particular case.

Years' purchase on rent from building.

66. Where the annual value to be capitalised is not the ground-rent, but the rental-profit derived from the accommodation provided by a building or structure on the land, the years' purchase would be lower : because the building or structure (apart from the recurring expenses for repairs), depreciates naturally as years roll by, and the portion of the investment representing the value of such building or structure gradually dwindles and is eventually lost. One way of meeting this is to include this dwindling value in the deduction for "sinking fund" ; and another way is to take a lesser number of years' purchase in consideration of the age and condition of the building or structure, that is to say its probable future life. The former, however, involves calculation of the depreciated value of the building or structure, and when following rental-method, the

Courts in India generally avoid this, and take these aspects into consideration in fixing the number of years' purchase. In the case of *Anandrao Vinayak vs. Secy. of State*[14], the Bombay High Court when dealing with a development scheme involving four upper floors, adopted 16⅔rds years' purchase as fair, a deduction being made for the period required for the completion of the scheme. This implied a new building with its full life[15] ahead, and the decision was taken in 1905 when Govt. securities yielded 3·6 per cent. In the same year the Calcutta High Court[16] dealing with *bustee rents* i. e. rents from room-tenants in a *bustee*, made a deduction of 40 per cent from the gross receipt and took 20 years' purchase.

Factors to be considered.

67. There are factors in each case other than the age and condition of the building which determine the years' purchase. These have been analysed in a case before the Calcutta Improvement Tribunal,[17] in the following manner :—

(1) the mode of letting, that is to say, whether the house is let out in its entirety to one tenant or by parts :

(2) the class of tenants whom the house would attract :

(3) the age and condition of the building :

(4) adaptability of the building to different forms of user :

(5) the chances of its being able to continue to yield the given rent in perpetuity[18].

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[14] 7 Bom. L. R. 580, 29 Bom. 565.

[15] The full life of a brick-building is usually taken as 100 years.

[16] *Secy. of State vs. Belchambers* (1905) 33 Cal. 408.

[17] *Case No. 80 of 1915* (Pr. 25—26 Russa Road).

[18] Mr. Campbell, referring to the case of *Bholanath Mallik vs. Heysham* (1871) 17 W. R. 221, enumerates the following matters as relevant :—(1) nature of the property, (2) its situation, i.e. whether in a poor district or an advantageous one, (3) the life of the building, (4) the possibility of having to rebuild it in the near future, and consequently the effect of the local municipal law-requirements thereon : e. g. size, height etc. allowable in proportion to the width of the street, side-space and open space to be left and so forth.

In this case part of the house was occupied by a Post Office for 30 years, and part was residential. The building was 30 years old, built with second class materials. The declaration was in 1914 when Govt. securities yielded 3·8 per cent. It was held that 6 per cent security was fair (i. e. 16⅔rds years' purchase), but 5½ per cent was adopted as the result tallied closely with the land-building method.

Velinker† observes that in Bombay freehold property consisting of land with building in good condition is usually valued at 16 2/3rds years' purchase. In an Allahabad case [19] of 1920, the Court, in the absence of evidence to justify a different rate, adopted 16⅔rds years' purchase. The yield from Govt. securities then was 5·9. In a later case [20] the same Court held that in a growing town like Cawnpore where the value of land was increasing rapidly, a basis of 16⅔rds years' purchase was too low. This was in 1921 (what is known as the "boom-time") and the Govt. securities yielded 6·2 per cent.

The instructions in paragraph 68 of the Bengal [21] Land Acquisition Manual, 1918, explain the position thus :— "A purchaser of agricultural or town land, other than a cultivator, ordinarily regards land as an investment yielding interest in the form of rent, and even the purchaser of house-property who intends to reside in the house regards the property as an investment which will save him the payment of a certain rent. The net annual profit (or saving as the case may be) obtained by such purchaser therefore represents interest on capital invested, and the rate of that interest is reasonably assumed to be equal to the rate of interest obtainable from other securities of similar safety. An investor in an uncertain security expects and obtains a higher rate of interest than an investor

† In "Law of Compulsory Land Acquisition and Compensation."

19 *Krishnabai vs. Secy. of State* (1920) 18 All. L. J 695.

20 *Lachman Prasad vs. Secy. of State* (1921) 43 All. 652.

21 The United Provinces Govt. Rule 1, which suggests calculation on only eight times the average of 3 years' rental of houses, apparently takes the gross rent. Still it would seem to be low. In any case it is difficult to have a general rule for application in all circumstances.

in a safe security. Land is a safe form of security, and conse quently an investment in land does not obtain a high rate of interest, but some kinds of land constitute safer securities than others, e. g. agricultural land is ordinarily the safest because it is least liable to undergo change and to remain vacant, and the safety of the security of the house-property depends on the condition of the building and the chances of the property remaining unlet. The number of years' purchase at which the net annual profits of land are capitalised are generally 16⅔rds, 20 or 25—though intermediate numbers are sometimes given. Sixteen-two-thirds years' purchase means that the interest on the investment is treated as 6 per cent, twenty years' purchase means 5 per cent and twenty-five years' purchase means 4 per cent". This was said in 1918 when Govt. securities yielded about 5½ per cent.

68. Of the several matters mentioned in the last paragraph, one is whether the house is let out in its entirety or by parts, and another is the class of tenants. These may as well be included in the deductions for vacancies, collection charges and bad debts. When so done, the years' purchase would not be reduced on this account ; but when not so done, it is usual to reduce the years' purchase. For example, where the house is let out in severalty to a number of tenants, where otherwise 6 p. c. security (i. e. 16⅔rds years' purchase) would be taken, 7 p. c. security (i. e. 14$\frac{2}{7}$ years' purchase) is taken. Similarly for "sinking fund", and if this has been (as is usually done) excluded from the deductions, a reduced years' purchase would be justified. To illustrate :—If the total deduction without including sinking fund, be 25 per cent for a house having a rent of Rs. 120/-, and 16⅔rds years' purchase be taken, the total value would be Rs. 18,000/- [22]. But if an additional 3 p. c. i. e.

[22] The following is a convenient table for application to get the total value from gross monthly rental :—

For	4%	security	and 20%	deduction,	multiply	gross	rent	by	240.
For	"	"	and 25%	"	"	"	"	by	225.
For	"	"	and 30%	"	"	"	"	by	210.

total 28 p. c. be deducted to get the net rental profit, then the above sum of Rs. 16,000/- will represent 17·45 years' purchase on the net profit.

Potential value, special adaptibility, better disposition.

Market-value and potentialities.

69. From the meaning of the term "market-value" as explained in the preceding notes, it would be evident that this value does not mean simply the value which the land has from the manner in which it is being actually used for the time being, but it includes all future possibilities on which a prudent purchaser would calculate and a vendor would base his expectations, both parties actuated by business principles. Such a possibility may be by putting the land to better use for a purpose to which it is adapted, or by developing the land in a better manner with a view to secure a profit at a greater advantage : or it may be merely what may be obtained by disposing of the land after a better lay-out, as by division of a large area into suitable plots or by amalgamation of a small area with other lands of the owner. All these are broadly termed "potential value", and this term includes what have been variously called—"future utility", "probable use of the land in a more lucrative manner", "special adaptibility", "better lay-out", and so forth.

For	5%	"	and	20%	"	"	"	"	by 192.
For	"	"	and	25%	"	"	"	"	by 180.
For	"	"	and	30%	"	"	"	"	by 168.
For	6%	"	and	20%	"	"	"	"	by 160.
For	"	"	and	25%	"	"	"	"	by 150.
For	"	"	and	30%	"	"	"	"	by 140.
For	7%	"	and	30%	"	"	"	"	by 120.

The formula is, $\frac{(100 - \text{percentage of deduction}) \times 12.}{\%\ \text{security.}}$

Meaning of potential value.

70. In the English case of *Regina vs. Brown* [1], decided so far back as 1867, Lord Cockburn explained the meaning of "potential value" thus :—"Not only the present purpose to which the land is applied, but also any other more beneficial purpose to which in the course of events at no remote period it may be applied, just as an owner might do if he were bargaining with a purchaser in the market."

A simple case is that of a piece of land situated close to or in the midst of a town-area, possessing thus a near prospect of being used as a building-site, though for the time being it is used for agricultural purposes. Such exactly was the circumstance in *Regina vs. Brown* : and also in the Indian case of *Atmaram Bhagawant Ghadgay* [2] before the Privy Council in 1928. The land in such circumstance is to be valued as a potential building site [3]. Another kind of simple case is a vacant piece of land in a town, without any building or other structure on it. Such land does not ordinarily yield any actual profit, and, if let out for no better use than bare land, may yield only an insignificant rent : but these are not the circumstances which determine its market-value. As a rule such land in a town, is attractive to

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[1] *Regina vs. Brown*, (1867) 2 Q. B. 630 (at page 631), 11 Digest 125, 160.

[2] *Atmaram Bhagawant Ghadgay vs. Collectar of Nagpur*, A. I. R. 1929 P. C. 92, 114 I. C. 587, 33 C. W. N. 458.

[3] The fact that it is burthened with an agricultural tenancy with occupancy right, is not an insurmountable obstacle, and does not affect the position : *Shiam Lal and others vs. Collector of Agra* (1933), (F. B.) 55 All. 897, A. I. R. 1934 All. 289, 1934 All. L. J. 8. So also *Secy. of State vs. Chunilal*, A. I. R. 1931 Lah. 207, 131 I. C. 864, 12 Lah. 117 when adaptible for being used for building purposes, the land cannot be treated as purely agricultural : also *Venkata Krishnaya Guru vs. Secy of State*, A. I. R. 1928 Mad. 89, 107 I. C. 503, 10 Bom. L. R. 675 and *Collector of Dacca vs. Haridas Bysak*, 14 I. C. 163 : *Makhan Das vs. Secy. of State*, 100 I. C. 508. See also *Nibash Chandra Ray vs. Bepin Behari Bose*, A. I. R. 1926 Cal. 846, 96 I. C. 69, 53 Cal. 407 in which though the point decided upon was about apportionment, the total value taken was the value of the land as a probable building site.

builders and house-occupiers, and as explained in an early case (1899) of the Bombay High Court[4], in such circumstance the owner of the site is entitled to the benefit of its situation and the likelihood that it will be adopted for like use. So, where the land had a special adaptibility for quarrying purposes[5], this was an element for consideration in fixing the market-value ; and where the land had a potential value as a mill-site[6] and in proximity to a Gun and Shell Factory, that was a consideration which must go into the market-value. And so also where the land had a special value for its adaptibility as a brick-field [7], in a tract where there were other brick-fields, though it was not being used as a brick-field at the time.

Value by disposing with a better lay-out.

71. On the point of potentiality by disposition with a better lay-out, a simple instance would be the case of a narrow strip of land of little market-value in itself, which is required for widening a road, or a small area required for rounding the corner of a street. In such case the owner may very well contend that he might get a good value if he amalgamated it with the rest or a portion of the rest, of his land. Conversely where a large area of the same owner is under acquisition, or the area is ill-shaped, the owner may contend that by dividing it out in small plots and providing access to all parts, he may reasonably expect to dispose of the area at a better advantage than when taken as a whole, even after making the necessary allowances.

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4 *Bhujabalappa vs. Collector of Dharwar* (1899) 1 Bom. L. R. 454.

5 *Raghunath Rao vs. Secy. of State*, A. I. R. 1921 Mad. 824, 60 I. C. 187, 44 Mad. 264 : *Daya Khushul vs. Asstt. Collector, Surat*, 38 Bom. 37, 21 I. C. 320 : *Govt. of Bombay vs. N. H. Moos*, 47 Bom. 218 : *Secy. of State vs. Shan Mugaraya Mudaliar*, 16 Mad. 369.

6 *Secy. of State vs. Nares Chandra Bose*, A. I. R. 1926 Cal. 1000, 44 C. L. J. 1.

7 *Mohini Mohan Banerji vs. Secy. of State* (1921), 25 C. W. N. 1002, 34 C. L. J. 188.

Potential value to be considered in compensation.

72. That "potential value", "special adaptibility" or "better lay-out for profitable disposition" and the like, are all elements which go into the consideration of what is the proper "market-value", had been recognised by the Courts in India in their earliest decisions. In *Prem Chand Burral's case* (1876)[8], the Calcutta High Court held that these elements necessarily came in, when applying "the current price of similar land in the neighbourhood" that is, what other people had paid for similar land when thrown in the market. The buyer would look ahead and calculate on the reasonable possibilities of the land to yield a better (the best) income by proper utilisation according to its suitability or special adaptibility, according to prevailing demands, or by suitable development. He will not confine only to the consideration of the return obtained with a "reference to the uses to which the land may be applied at the time", that is merely to its "present disposition". In *Wernicke's* case[9] (1909), the Calcutta High Court quoted with approbation the view expressed in a case of the Supreme Court of Tennessee that—"in estimating the market value of the property, all of the capabilities of the property, and all of the legitimate uses to which it may be applied or for which it is adapted are to be considered and not merely the condition it is in and the use to which it is at the time applied by the owner". In 1921 [10], the same High Court, explained the substance of the matter, thus :—"Tribunals assessing compensation must take into account, not only the present purpose to which the land is applied, but also any other more beneficial purpose to which in the course of events it might within a reasonable period be applied, just as an owner might do if he were bargaining with a purchaser in the market".

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8 *Prem Chand Burral vs. Collector of Calcutta*, (1876) 2 Cal. 103.

9 *R. H. Wernicke vs. Secy. of State*, (1909) 13 C. W. N. 1046.

10 *Mohini Mohan Banerji vs. Secy. of State*, A. I. R. 1921 Cal. 198, 67 I. C. 25, 34 C. L. J. 188, 25 C. W. N. 1002.

Later, in the case of *Lala Narshingh Dass*[11] (1924), their Lordships of the Privy Council, quoted the following expression in *Fraser vs. City of Fraserville*[12] as explaining the correct principle which had been repeatedly laid down by the Board and by the House of Lords :—"It is the value to the seller of the property in its actual condition at the time of expropriation with all its existing advantages and *with all its possibilities*, excluding any advantage due to the carrying out of the scheme for the purpose for which the property is compulsorily acquired."

We will deal with the exception part later on : but these quotations give the broad principle which has been consistently followed in numerous decisions[13] in India, and expanded according to the circumstances of each case.

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[11] *Lala Narsingh Das (Rai Bahadur) vs. Secy. of State*, A. I. R. 1925 (P. C.) 91, 86 I. C. 556, 52 I. A. 133, 27 Bom. L. R. 783, 29 C. W. N. 822, 26 P. L. R. 205, 23 A. L. J. 118, 48 M. L. J. 386. The same principle followed in the case of *Atmaram vs. Collector of Nagpur*, 88 C. W. N. 458.

[12] *Fraser vs. Fraserville City*, (1917) A. C. 194, 86 L. J. (P. C.) 91, 11 Digest 124 (e).

[13] The general doctrine is repeated in most of the cases quoted under paras 74 to 77 *post*. in which other collateral matters for consideration are also discussed. The doctrine is explained in other cases also. *Revenue Divisional Officer, Trichinopoly vs. Srinivas Ranga Iyengar*, 1987 M. W. N. 1006 : the Court to look not simply to the actual use at the moment, but consider the most lucrative use to which the land could be put. Same also in *Rameswar Sing vs. Secy. of State*, A. I. R. 1929 Pat. 733, 8 Pat. 793. Seller entitled to value of the land with all its existing advantages and with all its possibilities—*Makhan Das vs. Secy. of State*, A. I. R. 1927 All. 752, 100 I. C. 508, 25 A. L. J. 187. All the potential uses to which the land can be put, all the advantages present or future—*Abdul Rahim vs. Secy. of State*, A. I. R. 1926 Lah. 618, 97 I. C. 775, 27 P. L. R. 679. Not merely in accordance with present use, but with reference to the probable use which would give the owner the best return—*Hardwari Mal vs. Secy. of State*, 64 I. C. 145. Land with all its potentialities to be considered—*Collector of Chingleput vs. Kadir Mohiuddeen*, A. I. R. 1926 Mad. 782, 95 I. C. 888. Not only the past user but also possible benefits in future—*Manmatha Nath Mullick vs. Secy. of State*, A. I. R. 1924 Cal. 574, 88 I. C. 442, 28 C. W. N. 461. Possible use which would give the owner the best return—*Kam Saran Das vs. Collector of Lahore*, 9 I. C. 228, 9 P. W. R. 1911.

Speculative or impractical assumptions to be rejected.

73. But the doctrine of potential value or special adaptibility, as stated broadly above, always implies a certain amount of conjecture about future probabilities, and this has sometimes led to claims founded on schemes of utilisation or adaption, of too speculative a character or impractical imagination or of very remote possibility. Judges had, therefore, numerous occasions to warn against misuse of the principle. The important point to be borne in mind is that the objective of any calculation is to ascertain the "market-value", that is, the value which the vendor may reasonably expect from his property, if thrown in the market for sale; and the central idea from which the doctrine of potential value has evolved is that the owner of a property, when he throws it in the market for sale, would always base his demand on the potentialities of his property, while a prudent purchaser will calculate only on such probabilities as are immediate and capable of practical realisation.

The essential conditions.

74. The essential conditions as elucidated in the various cases in which the question of special adaptibility or possibility of better disposition, was mooted, may be summarised as below :—

(i) that the proposition is not a mere speculation or unpractical imagination [14] :

(ii) that the expected user should be *immediately* available,

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[14] *Rajendta Nath Banerjee vs. Secy. of State* (1904) 32 Cal. 343 : *Fink vs. Secy. of State* (1907) 34 Cal. 599 : "Not idle speculation or impractical imagination"—*Khusiram Deomal vs. Asst. Commissioner of Shikarpur*, A.I.R. 1925 Sind. 112, 79 I. C. 876 : also *Rameswar Singh vs. Secy. of State*, A. I. R. 1929 Pat. 733, 8 Pat. 793 : "Court should avoid hypothetical speculations and rely on admitted and proved facts" (it was a case where the potentiality contended was quarrying)—*Land Acquisition Officer, Bandra vs. Gulam Hussein* A. I. R. 1926 Bom. 433, 96 I. C. 284, 28 Bom. L. R. 714 : "Future utility not to be conjectural but estimated by prudent business calculation"—*Alaul Haq vs. Secy. of State*, 8 I. C. 277, 11 C. L. J. 398.

and so obvious that its present value could be easily ascertained : and it must not be a remote or uncertain possibility [15] :

(iii) that the calculations must be based on the market-values and conditions existing at the date of the notification under section 4 (1),—such as demand for such utilisation and a market for it at that date [16].

In short, the probability must be strong, and such as would induce an ordinary prudent man to invest in land on the good faith of such probability materialising within a reasonable time[17]. A land may possess certain potentialities, but it does not follow that those potentialities have any *present* value : for, any demand or signs of enterprise for exploitation of the potentialities may be non-existent. If they are *so remote* that no purchaser would designate them in his mind so as to give definite values to them, they must be discarded [18]. Existence of user of other similar lands in the locality for the purpose contended, or of purchases for such purpose, would *prima facie* indicate that there is a demand and the probability of the user of the land under acquisition is a reasonable probability. In the English case of *Sydney vs. North Eastern Rail Co.* [19], where evidence showed that there were already several competitors in the field for getting the land for the same purpose for which higher value was

[15] So that its *present* value could be ascertained—Re. *Dorabji Cursetji Shroff* (1907), 10 Bom. L. R. 675 : also Re. *Dhanjibhoy Bomanji* (1907), 10 Bom. L. R. 701. See also *Thareesamma vs. Dy. Collr. of Cochin*, A. I. R. 1924 Mad. 252, 77 I. C. 347, 45 M. L. J. 389, where it is explained that the more beneficial use contended must be available "at no remote period." Also *Collector of Chingleput vs. Kadir Mahiuddin*, A. I. R. 1926 Mad. 782, 95 I. C. 883, 50 M. L. J. 566—claimant not entitled to the hypothetical profit which he is likely to make only *in certain events* happening (at a future date).

[16] This follows from (ii). See cases cited in footnote above. The most important point is whether there is any particular *demand* for the purpose : and in a case in which agricultural land is sought to be valued as a building site, the Court should take into consideration the probability, if any, for *demand* for the land in question for building purpose : *Secy. of State vs. Gopal Singh* 1 I. C. 210.

[17] *Dhani vs. Superintendent, Dehra Dun* (1890) 10 All. W. N. 129.

[18] In re : *Sorabji Jamsedji Tata* (1908) 10 Bom. L. R. 696.

[19] (1914) 3 K. B. 629 (11 Digest 128, 171).

claimed, that was indicative of the existence of a demand and a market at the time of acquisition. So, where there was trustworthy evidence to show that if the acquired land had been thrown into market others would have bought it for the special purpose (here it was brick-making), that showed the demand and a market at the time [20]. The "potential" purpose must be such for which there are other possible purchasers in the market-conditions [21].

Cases of imaginary market.

75. Controversies often arise where the existence of a market is not shown by proof of sales or enquiries for purchase. But an imaginary market such as might be created if the land had been put in the market for sale at the time of acquisition, cannot altogether be ruled out : for, there may be other circumstances (e. g. a vacant piece of land in the midst of a building area) which may show that the more profitable user and a higher value on that account was a reasonable probability. What is to be guarded against is that "it is not idle speculation or impractical imagination", but that it is a matter of "prudent business consideration such as would prevail with an intending purchaser at the imaginary market which would have obtained if the land had been announced for sale at the time of acquisition"[22], But it is on the claimant to establish the likelihood[23], and so in a case in which it appeared that demand for buildings was limited, that is to say any assumption that the land in question which was agricultural, would be assimilated for building purpose within a reasonably near period would not be justified, it was not valued as a building site[24]. In any case, where potentiality is valued, it is only the *present market-value* of that potentiality which can be awarded[25].

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20 *Mohini Mohan Banerji vs. Secy. of State*, (1921) 25 C. W. N. 1002.

21 *Tharessamma vs. Dy. Collr., Cochin*, A. I. R. 1924 Mad. 252.

22 *Khusiram vs. Asstt. Collector, Shikarpur*, A. I. R. 1925 Sind. 112.

23 *Secy of State vs Gobinda Ram*, 11 I. C. 838.

24 *Tara Singh vs. Secy. of State*, A. I. R. 1933 Lah. 503, 34 P.L.R. 997.

25 *Vallabhdas vs. Collector*, A. I. R. 1929 (P. C.) All. 112, 115 I. C. 780, 33 C. W. N. 549, 26 A. L. J. 1884.

Exception when the advantage is available only to the acquiring body.

76. The exception to the adoption of potential value, to which reference has been made in paragraph 72 *ante*, viz., "any advantage due to the carrying out of the scheme for the purpose for which the property is compulsorily acquired", follows from the general elucidation of "potential value" given in the preceding paragraphs, as also from section 24 fifthly, *post*. The principle is put thus also in section 2(*3*) of the English Land Acquisition Etc. Act of 1919 :—"The special suitability or adaptibility of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied *only* in pursuance of statutory powers, or, for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government Department or any local or public authority".

The main point is that apart from the acquiring body, there is no other buyer who would need the land for the purpose for which it is acquired,—a purpose which enhances its value when so used : or in other words it is not open to the owner or any private purchaser from him to use it for that purpose. So, where land-value was claimed for a road as a potential building-site, the Privy Council held [26] that such claim could not be allowed in as much as the owner (or any private purchaser from him) could never have used the road-land for such purpose, although the acquiring body after acquisition could use it so. In an Allahabad case[27] of 1911, it was held (following the English case known as *Stebbing's* case [28]) that

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[26] *Manmatha Nath Mitter vs. Secy. of State*, (1897) 25 Cal. 194, 24 I. A. 177, 1 C. W. N. 698.

[27] *Ujagar Lal vs. Secy. of State*, (1911), 33 All. 733, 8 All. L. J. 796.

[28] *Stebbing vs. Metropolitan Board of Works*, (1870) 6 Q. B. 37 (7 Digest 550, 284). Here the land was portion of a church-yard, which the Rector who made the claim was unable to sell or let for secular purposes. But in the later case of *City and South London Rail and St. Mary Woolnoth* etc. (1903) 2 K. B. 728 (affirmed 1905 A. C. 1, 11 Digest 125, 159) when it was shown that the disability was removeable by an Order of the Council under the Union Benefices Act of 1860, a different view was held. Following

when the land could never be built upon by the owner, it could not be valued as a building-site. This is well-expressed in *Wernicke vs. Secy. of State*[29], where it is said that—"the measure of compensation indeed is not what the person who takes the land will gain by taking it but what the person from whom it is taken will lose by having it taken from him or, in other words, the owner is only entitled to receive for the land he gives up, its proper equivalent and this equivalent is estimated not on the value to the purchaser, but on the value to the owner". The other aspect of the matter is what directly bears on the principle in section 24 fifthly *post*, which is, as also explained in the same case, that—"in estimating the market-value of land, the purpose for which the land is taken should not be taken into consideration, for if it were so done, the result virtually would be that the public would be purchasing, as it were, its own improvements."

Exception not applicable where the potentiality is open to the owner to avail of :

This latter aspect does not, of course, mean that, where the special adaptibility or user was open to the owner to avail of, it would be ruled out simply because the purpose of the acquisition happens to be the same : for, if it be otherwise, an ordinary bare piece of land in a town which it is open to the owner to build upon, cannot be valued as a building-site when the purpose for which it is acquired is also to

this latter case the Bombay Tribunal of Appeal (Reference No. 68 of 1904) allowed a claim of higher value as a building site for land reserved for Parsi marriage ceremonies and as such not to be built upon. According to these views the test is whether the nature of the disability is such as makes it probable that it can be avoided. So in *Manekhlal Hirabhai vs. L. A. Officer West Khandesh*, A. I. R. 1937 Bom. 177, 168 I. C. 705, 39 Bom. L. R. 142, it has been held that refusal by the Municipality of permission to build cannot be taken into account and the land must be valued as a building-site where it was otherwise suitable for building. A similar view was taken in a Sindh case *Secy. of State vs. Sukkur Municipality*, A. I. R. 1931 Sind. 67, 131 I. C. 178 where the question was about land which had been left unassessed on the understanding that it would be used as a tow-path. But in this case the land was not being used as a tow-path at the time.

[29] (1909) 13 C. W. N. 1046, 2 I. C. 562.

build a house on it. A feature of special suitability for which there is otherwise a demand and a market, is nonetheless a determining factor for the market-value. In the English case known as the *Thirlmere* case [30], the land was being acquired for the construction of a reservoir for the collection, diverting and impounding of water, a purpose for which it had the advantage of "natural and peculiar adaptation" : and it appeared that there were people who would be willing to pay a higher price on account of such special adaptibility, it was held that that was an element which was rightly taken into account in assessing compensation [31]. So, where land was being acquired for quarrying purposes, its special adaptibility for quarrying is an element for consideration in fixing the amount of compensation [32], and the position is not affected by the fact that the purpose of acquisition was also quarrying. The position has been comprehensively explained by the Privy Council in a recent case of 1939 [33], in which it has been observed that when the owner is the only person who can turn the potentialities of the land (it was a natural reservoir of water), "the value to it must be ascertained by reference to what profit he might thereby have been able to derive from the land in future", and that it was immaterial that the only other competitor was the acquiring body or that the demand for the utilisation of the potentiality of the land existed only for the purposes of that body, though the ascertainment of its value may in some cases be a matter of considerable difficulty. The

and it is immaterial that the acquiring body is the only person for whose purpose it can be so availed of.

[30] *Manchester Corporation vs. Countess of Ossalinski*, heard in Q. B. D. of the High Court on 3rd and 4th April 1883 : also *Ripley vs. Great Northern Rail Co.*, (1875) 10 Ch. App. 435 (11 Digest 128, 161).

[31] *Re. Lucas and Chesterfield Gas and Water Board* (1909) 1 K. B. 16 C. A. (11 Digest 127, 169) : also Re. *Tynemonth Corporation etc.* (1908) 89 L. T. 587.

[32] *Raghunath Rao vs. Secy. of State*, A. I. R. 1921 Mad. 824, 60 I. C. 187, 44 Mad. 264.

[33] *Sri Raja Vyricherla Narayana Gajapatiraju Bahadur Garu vs. Revenue Divisional Officer, Vizagapatam*, 43 C. W. N. 557.

bearing of this decision on section 24 clause fifthly, will be dealt with in the notes under that section *post.*

Potentialities of higher value by better lay-out.

77. Allied to the possibilities of higher value by the other manners of user than the existing manner, is the possibility of having a better value by selling the land with a different disposition or lay-out. This is an element for consideration in determining the market-value. In *Prem Chand Burral's* case [34], the Court observed—"the question for enquiry is, what is the market-value of the property—not according to its present disposition but *laid out in the most lucrative way* in which the owner can dispose of it." The question usually arises when dealing with a large or an ill-shaped area for which, taken as a whole, there is no good market but which may be disposed of at a better advantage if divided into plots of sizes for which there is better demand, and provided with roads and accesses to all parts. Such a scheme may be a simple one in which nothing more than a road with sewer or other drainage is necessary; or it may be still simpler where there are two or more roads along the boundaries of the area, and the land is simply divided into parts according to the frontages on these roads, each part then being valued separately. But it may be more complex requiring a good deal of alteration in the existing conditions: for example tanks and low lands may have to be imagined as filled up and grounds levelled, and extensive arrangements of roads and side-roads with drainage, lighting and water-supply provided for. All these involve enterprise and capital in the first instance, which may not be a very probable contingency for a private owner or for the market-conditions at the time. If from these points of view the scheme is of too imaginary a character or of remote possibility, it has to be discarded for the same reasons for which potential value would be discarded for unpractical assumptions. But where a "lay-out" scheme is not vitiated by such elements of mere imagination or remote possibility, it would

Must not involve imaginary or remote possibility.

Prem Chand Burral vs. Collector of Calcutta, (1876) 2 Cal. 108.

be covered by the general principle which was laid down in *Prem Chand Burral's* case and repeated in a series of later cases[35], viz, "market-value of the land acquired should be determined not necessarily according to its present disposition, but laid out in the most lucrative and advantageous way in which the oweer could dispose of it". In *Government of Bombay vs. Karim Tar Mahomed* (1908)[36], this is explained in another way that an owner can seek to prove either what his plot would fetch if sold in block, or what its present value is if he plotted it out and sold it in plots.

expenses etc. of maturing a lay-out scheme to be deducted.

It is however the market-value of the property at the date of the notification under section 4(*1*), taken in its entirety, which has to be ascertained, howsoever that value is worked out. Expenses involved in maturing a lay-out scheme and the loss of intereet on the capital spent and of the rent (if any) for the period from that date till the date when the development may be expected to be completed and all the plots[37] sold, would have to

[35] *Bombay Improvement Trust vs. Karsandas Nathu*, (1908) 28 Bom. 28, 10 Bom. L. R. 688 : In re. *Government and Doyal Mulji*, 9 Bom. L. R. 99. Same observation in *Mahomed Ismail vs Secy. of State*, A. I. R. 1936 Lah. 599, and in *Maung Bow vs. Special Collector, Maobin*, A. I. R. 1985 Rang. 157, 156 I. C. 624 : and in *Abdul Rahim vs. Secy. of State*, A. I. R. 1926 Lah. 618, 97 I. C. 776, 27 P. L. R. 679. The position is approached in another way in Re. *Sorabji Jamshedji* (1908) 10 Bom. L. R. 696 (at page 698),—viz., when valuing land in the rough it is not right to lay too great a stress on its existing position and means of access, as these may be entirely altered when the opportunity comes to bring the land into use.

[36] 38 Bom 825, 10 Bom. L. R. 660. Also see in re. *Dhanjibhoy* (1907) 10 Bom. L. R. 701, in which it i. observed that although the method of plotting out a large area ir suitable plots is artificial, it is too well established.

[37] The net area available for sale would obviously be less than the total area of the entire land : for, the areas of lands taken up by the roads would have to be deducted. This incidentally, explains the observations in *Chettiammal vs. Collector of Coimbatore*, A. I. R. 1927 Mad. 867, 105 I. C. 219, that taking the values of small plots as of 4 and 6 cents, these cannot be applied over an entire area of seven acres, much of which would have to be devoted to roads and lanes,

be calculated and then deducted from the total of the prices likely to be obtained from the sale of these plots. There cannot obviously be any hard and fast rule of a percentage for these deductions ; it will depend upon the circumstances. In a case before the Bombay High Court[38], it was observed that this might be between 33 to 50 per cent. In a case[39] of a large area of about 37 bighas of land acquired for a burial ground in the suburbs of Calcutta, the High Court made a deduction of 30 per cent which included 7½ per cent for road-land.

Question of demand for "lay-out" plots,

A lay-out plan by dividing a large area into small plots, may give a better value only when it is evident that there is no market for the area in its entirety[40], but there is a good market for small plots into which the area would be divided. So, in the case of *Secy. of State vs. Sarala Devi Chaudhurani*[41], the Court, while repeating the doctrine of better lay-out, and observing that "objectors can put forward a scheme showing how the site in question could have been developed by splitting it up in various plots", emphasised that "evidence must be led to show that there was any real demand for small houses or shops in the vicinity". Otherwise, the whole scheme would be vitiated as being too imaginary and unpractical, and as not being a possibility at the date of the notification.

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38 *Bombay Improvement Trust vs. Merwanji Manekji*, A.I.R. 1926 Bom. 420, 96 I. C. 425, 28 Bom. L. R. 701.

39 *A. de Bois Shrosbree & Ors. vs. Secy. of State*, A.O.D. No. 192 of 1933.

40 See the case of *Collector vs. Ram Chandra Harish Chandra* A. I. R. 1926 Bom. 44, 91 I. C. 300, 27 Bom. L. R. 1276, in which it was observed that—"the only way in which the market-value can be arrived at is to judge from other sales what the *whole land* was likely to realise in the market". This presupposes the existence of a market for a large area i. e. of instance of sales of such area *enbloc*. But usually there is a paucity of private enterprises even in large towns : but where such enterprises whether in individual capitalists or in companies exist, instances of actual purchases by them would be a better guide than hypothetical lay-outs and calculations of probable expenses, loss of time, interest on capital etc.

41 A. I. R. 1924 Lah. 548, 79 I. C. 74, 5 Lah. 227.

Hypothetical building schemes.

78. The calculations with "hypothetical building-schemes" (or what are called in England—development of "building-estates"). for the purpose of ascertaining the market-value of bare land in a large undeveloped area in or near a town, are discarded by Indian Courts as involving too much of jugglery with imaginary figures. Such schemes mean not simply dividing the area into small plots by laying out roads and drainage etc. but also building of houses on all these plots and then determining the value which may be obtained either by selling them (land with the buildings as would be built) or by letting them out[42]. In *Merwanji's* case[43], the High Court of Bombay made strong observations about the dangers of working on such building schemes when sought to be applied to large areas. Similar observations were also made in a number of later cases[44]. When, however, the Bombay case of *Merwanji* came up before the Privy Council[45], their Lordships (Lords Shaw and Macnaghten) did not agree, and observed that "hypothetical building schemes are the usual basis of valuation of building-land", and even expressed surprise that Government had objected to the application of such a scheme in the case. In fact a certain amount of conjecture about the plan and cost of a building and

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[42] For reference, see Hawkin's "Development of Building Estates"; also Curtis's "Valuation of Land and Buildings", 6th Ed. pages 95-110.

[43] *Government of Bombay vs. Merwanji* (1908) 10 Bom. L. R. 907, 48 Bom. 190.

[44] Re: *Dhanjibhoy Bomanji* (1907) 10 Bom. L. R 701, in which it was observed that a hypothetical building scheme method was a mere delusion when applied to a large area. See also *Secy. of State vs. Amulya Charan*, A. I. R. 1927 Cal. 874, 104 I. C. 129 (following 26 Bom. 1. P. C.): also *Raghunath Das vs. Collector of Dacca* (1910), 11 C. L. J. 612 in which such a scheme was deprecated as too remote, speculative and conjectural.

[45] *Merwanji Muncherji vs. Government of Bombay* (1912) 16 Bom. L. R. 55 (P. C.). But the conditions in this respect in India are hardly comparable with those in England. Here ventures for large "building estates" are rare, and an attempt to value large areas of land with imaginary conception of so many uncertain and unproved factors, when sought to be applied to a large area to comprise of numerous hypothetical buildings, would be very unsafe.

eventual rent or profit which may be derived, is always involved when a vacant piece of land in a town is valued as a potential building-site, or when the question is what a purchaser may pay when the property is only partially developed. Such conjectures are reflected in the sale-prices of similar lands, and where sales are not available, a building-scheme may have to be contemplated. So long as it is a simple case of one or two buildings there is not much scope for wild imagination ; but the position would be very much different when in an acquisition of a vast area the value of the land sought to be found out would bear only an insignificant proportion of the cost of the imaginary buildings, roads, sewers etc. However where hyphothetical building schemes are taken as the basis of valuation, the course contemplated in it requires that a surveyor should be called who would unfold the scheme giving details of the amount to be spent and estimating probable returns, so that all these could be properly tested in cross-examination [46].

Present disposition or use, under certain special Acts.

Restriction of "present disposition" or "present use" in certain local Acts.

79. The term "market-value" as at the date of the notification for acquisition, in clause first of section 23(*1*) is modified by the Calcutta Improvement Act of 1911 [schedule, article 9(*3*) (*a*)], by the qualifying expression—"according to the disposition of the land at the date of the declaration relating thereto". The Calcutta Municipal Act. 1923 section 475, has also similar qualifying expression,—"according to the disposition of such land or building at the date of the publication of the declaration relating thereto under section 6" ; and the words in the United Provinces Town Improvement Act of 1919 [schedule, article 10(3)(a)], are "market-value according to

[46] *Narsingh Das vs. Secy. of State* (P. C.) A. I. R. 1928 Lah. 208, 112 I. C. 797.

the use to which the land was put at the date with reference to which the market-value is to be determined under the clause" i. e. clause first of sec. 23 (1) of the Land Acquisition Act. The question which arises thus is—do these qualifying expressions rule out consideration of "potential value" as explained in the previous paragraphs, altogether ? In other words, do they mean that the valuation should be kept down to what is justified by the present disposition and user of the land, without any consideration of future disposition however probable or immediately possible that may be ? If so, then a vacant piece of land which in its present disposition or user is not let out to any one, would have no market-value ; for, any consideration of its being otherwise dealt with e. g. by letting out or by erection of a building on it, would be ruled out. Similarly, if such land in a town is let out on ground-rent which is usually low, and if any other mode of disposition is ruled out, no more than the capitalised value of such ground-rent can be claimed. The rule laid down in numerous cases that sales of the same or similar lands in the neighbourhood give a basis for the compensation to be awarded as market-value, would have no place : for, sale-prices, as has previously been explained, do include probable future benefits which the purchaser would obtain by more profitable disposition or utilization of the land [47]. Such a position would appear to be obviously unconscionable : yet this is what would seem to follow from a plain reading of these qualifying expressions.

Restriction unconscionable if literally interpreted.

80. The origin of this qualifying expression is from clause (c) of section 557 of the old Calcutta Municipal Act III of 1899, which was the first legislation in which it was introduced. The obiviously unconscionable results of a literal interpretation of the words which might arise in some cases, particularly cases of vacant, or un-developed or under developed

Origin of the restricting expression—old Calcutta Municipal Act of 1899.

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[47] Take the illustration No. (4) in paragraph 56 *ante*, "only the rental value as from the present disposition or user of the property, viz. Rs. 8,182/-

lands, were forcibly put forward by the opposing members [48] during the debates which led to the Act of 1899.

Reasons, as from the debates in the Council.

Hon'ble Mr. Oldham on the side of Government, while frankly admitting that the clause was "a deliberate attempt to change the law", proceeded to explain that all that was intended was to avoid a too wide an application of the general principle laid down in *Prem Chand Burral's* case, as for instance to justify the owner of land in the suburbs of Calcutta (Ballygunge) to claim "the utmost possible prospective value which the land might some day possibly be worth". Taken so, he said, the land "must be taken at a reasonable value ; it must be taken at its *immediate* and *probable* value in the market. The market-value still remains the same". As an illustration Hon'ble Mr. Handley cited a case of "a filthy *bustee* occupied by sweepers and buffaloes, and when this *bustee* was removed and the case came into Court, the first witness that stepped into the witness-box was an engineer, and he produced a beautiful plan on paper with most beautiful residential houses for Europeans which he said might be let at Rs. 300/- or Rs. 325/- a month, and on this basis he advanced an enormous claim to this land". The limitation of "disposition at the time the land is purchased (acquired) meant," as he (Hon'ble Mr. Handley) understood, "such purpose to which it might reasonably be put or to which the owner had such intention of putting it : not a fancy idea that might arise when the land was taken up by Government to enhance its price and to put a fictitious price upon the land by putting up some schemes which never had any existence except on paper". Hon'ble Mr. Bolton observed that *Prem Chand Burral's* case was decided under the old Act of 1870, and while "a fresh ruling under the new Act (viz. the Land Acquisition Act of 1894) should

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can be allowed : for, the other valuation is justified only on the assumption of better utilization by further extension of the building.

[48] Hon'ble Dr. Ashutosh Mukhopadhay, Hon'ble Surendra Nath Banerji, Hon'ble Baikuntha Nath Sen and Hon'ble Jatra Mohon Sen : Proceedings of the Council of the Lieutenant-Governor of Bengal, 1899 (Vol : XXXI).

be awaited", the proposed clause (c) was desirable "to emphasise the fact that any disposition of the property subsequent to the declaration should not be taken into account in awarding compensation". Hon'ble Mr. Baker referred to the other provision viz. clause (d) of the section, which gave the benefit of a presumptive valuation to the owner at 25 times the municipal assessment (annual) value, observing that vacant or waste lands were not certainly assessed by the municipality at *nil*, and any case of hardship would be met by this provision.

Object was to restrict too wide an application of the rule in Prem Chand Burral's case.

81. From a perusal of the proceedings it would thus seem that so far as the framers of the section are concerned, their intention was not to shut out immediate or probable better disposition of the land, but to provide against too wide and mistaken application of the general rule laid down in *Prem Chand Burral's* case involving exhorbitant valuation on remote, imaginary or merely speculative scheme of disposition for higher value. The interpretation given to the rule in *Prem Chand Burral's* case in the numerous decisions referred to in paragraphs 70 to 75 *ante*, practically bring about the same result, viz. that remote, improbable or imaginary ideas of possible disposition of the property are ruled out. But yet the language adopted, viz., "according to the *disposition* of the land at the date of the declaration relating thereto",—was quite unambiguous and could certainly not bear an interpretation of such hidden intention. In fact Hon'ble Mr. Oldham admitted that—"he was not prepared to affirm that he could defend the somewhat stringent words with which the clause ended, after the strong case made out against them by the Hon'ble Member for the University" (Hon'ble Dr. Ashutosh Mukhopadhay). But still the words were retained. Apparently the authorities felt that whatever difficulty might arise with regard to vacant or undeveloped land, it would be met by the other provision in that Act which provided for compensation at 25 times the annual value adopted for Municipal assessment.

But the language does not carry the object:

82. So it was that, when the question of interpretation of clause (*c*) of section 557 of the old Calcutta Municipal Act, came up before the High Court in *Harish Chunder Neogy's* case [49] (1907), it was held that the above clause (*c*) of the Municipal Act, "precluded any valuation based on the most advantageous disposition of land e.g. a valuation of *bustee* land on the supposition of its adaptibility for use as building-land to carry expensive structures, which is the advantageous use to which land can be put in Calcutta." The Court, however, found a way out to determine a fair amount [50], from clause (d) of that section, viz., by giving 25 years' purchase on the municipal assessment valuation—the same as was conceived by the legislators when enacting the provisions of clause (*c*).

—but met by the rule of 25 times the Municipal valuation.

Difficulty where the rule of 25 times the Municipal valuation does not apply.

83. When, however, this restrictive clause was later carried into the Calcutta Improvement Act of 1911 [schedule, article 9 (*3*) (*a*)], or in the Calcutta Municipal Act of 1923, a provision corresponding to clause (*d*) of section 557 of the old Municipal Act, which was intended to give relief in such cases, was not included. Whether it was an oversight or intentional, it is difficult to say : for, there was no discussion on this point when the Act of 1911 or the Act of 1923, was passed. It is, however, a notable fact that the Calcutta Improvement Trust or the Calcutta Municipal Corporation has never

[49] (1907) 11 C. W. N. 875, followed in *Manindra Chandra Nandi vs. Secy. of State*, (1914) 41 Cal. 967, 18 C. W. N. 884. In *Ahidhar Ghosh vs. Secy. of State* A. I. R. 1930 (P. C.). 249, 124 I. C. 908, 57 I. A. 228, 34 C.W.N. 877, the acquisition took place prior to 1923, and the High Court determined the value under clause (d) of section 557 of Calcutta Municipal Act, 1899 and it was approved by the Privy Council.

[50] In fact in this case prices obtained in sales of neighbouring lands were considered, and emphasised : and it was only an accident that the value so obtained tallied with 25 years' purchase of the municipal assessment valuation of the annual value.

insisted on a strict interpretation of this restrictive provision, and market-values have as a rule been determined in accordance with the ordinary principles of "potential value" as accepted otherwise in India and in England : and in no case before the High Court of Calcutta in which valuation was contested on behalf of the Crown, was this restrictive expression sought to be interpreted as meaning that it ruled out "potential value." In the case of *Madan Mohan Burman* (1925),[51] the question was involved indirectly : and the fact that the High Court held that in the valuation of *bustee* land it was wrong to exclude evidence of a sale of a piece of land in the neighbourhood in which there was a *pucca* building, goes to show that the potential value of the land as a building site has to be considered. In the case of *Hindusthan Co-operative Insurance Society*, (1929)[52], in which the subject-matter was a large tract of vacant land in the suburbs of Calcutta for which the owners (the Society) had a lay-out scheme with plans to drive roads through the area, it was held that—"the real disposition of the land was that it was a part of scheme for the purpose of selling it in small plots to purchasers as building sites", and the land was valued on this basis. This meant that the potentiality of the land for building purposes was taken into account. The absurdity to which the position may be reduced if the restrictive clause is strictly interpreted would be evident from the view taken in the Full Bench case of Allahabad[53] in which the question was the interpretation of a similar provision in the United Provinces Town Improvement Act VIII of 1919, in which the expression used is "market-value *according to the use* to which the land was put at the date with reference to

Calcutta High Court has never ruled out potential value.

But different view by the Allahabad High Court.

[51] *Madan Mohan Burman vs. Secy. of State*, A. I R. 1925 Cal. 481.

[52] *Hindusthan Co-operative Insurance Society vs. Secy. of State*, A. I. R. 1930 Cal. 230, 56 Cal. 989, 121 I. C. 787.

[53] *Secy. of State vs. Makhan Das*, A. I. R. 1928 All. 147 (F. B.), 107 I. C. 587., 50 All. 470, 26 A. L. J. 69, reversing the view taken in A. I. R. 1927 All. 752.

which the market-value is to be determined." It was held that where on such date the land was not being put to any use, its market-value may be *nil*[54]. One may perhaps attempt to reconcile the practice in Calcutta with the view taken by the Allahabad High Court, by drawing a distinction between the words "disposition" and "use" : but it cannot be said that there is really much difference in the substance of what these words respectively connote.

Is the restrictive clause superfluous ?

84. But the word "market-value" (and not simply "value") is used in both the Acts, and taking "market-value" as meaning what the owner may obtain by selling the land in the market, would it be reasonable to interpret the expression in its entirety, as meaning simply what a person would pay if he bought the land as it was ? But this, as has been explained before, is also what the term "market-value" means without these restrictive terms of "present disposition" or "present user" ; and the interpretation would obviously render these terms as purposeless. Yet it is difficult to assume that the legislature could intend expropriation of an owner without any compensation, simply because he was not at the moment putting the land to any profitable "disposition" or "use" ; although it is capable of being immediately put to valuable use, and the owner may reasonably expect, and does as a matter of fact get, a value from a purchaser on the basis of such utilisation of the land. The position seems to require clearing up by proper legislation ; for, otherwise the clauses as they are in these Acts, imply a departure from one of the fundamental principles of compensation in compulsory acquisition.

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[54] This would apply to all cases of vacant lands which are not being used at the moment for any profitable use. The view taken assumes an intention of the legislature to expropriate the owners of such land without any compensation : and it is a controversial question whether such an extraordinary intention could be assumed unless expressly stated.

Doctrine of Re-instatement.

The rule of re-instatement.

85. In the preceding discussions, the market-value of a property has been approached mainly from the point of view of what a purchaser, actuated by business principles (i. e. on calculation of what pecuniary profit he may derive from the property) would pay. But from the principle in compulsory acquisition that the owner is entitled to be compensated for the losses he suffers, although he may not expect payment for them if he sold his property voluntarily,—the question of compensation may have sometimes to be approached from the point of view of "re-instatement" i. e. the cost of providing the owner with an equally suitable site and equally suitable building elsewhere [55].

Engish law.

The principle is enunciated in section 2(5) of the English Acquisition of Land Etc. Act of 1919, which runs thus:—"Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the official arbitrator is satisfied that re-instatement in some other place is *bonafide* intended, be assessed on the basis of the reasonable cost of equivalent re-instatement." The common cases of this nature in England, are where there are churches, chapels, public buildings (e. g. a school), cemetry land, public parks or similar properties of a non-commercial character [56]. The basis of compensation in such cases is the actual cost and expense of the re-instatement as nearly as possible comparable with the property given up.

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[55] *London School Board vs. South Eastern Rail Co.* (1887) 3 T. L. R. 710 C. A. and Cf. *A and B Taxis. Ltd. vs. Secy. of State for Air* (1922) 2 K. B. 828, C. A.

[56] Curtis on "Valuation of Land and Houses", 6th Ed. p. 251. See also Cripps on "Law of Compensation", page 118: and Browne and Allan's "Law of Compensation", 2nd Ed. page 656. Also the summary in Halsbury, 2nd Ed. Vol. 6, article 42.

86. There is no provision in the Indian Land Acquisition Act, corresponding to section 2(5) of the English Act of 1919. But the principle is recognised by the Courts. In a case[57] where certain land used for a Municipal drain was being acquired by Government for building quarters for a Police Officer, it was held that the principle of re-instatement could be called in aid, and compensation was assessed at the cost of having other suitable land for the purpose *plus* the cost of adapting it to such use i. e. municipal drainage. In this case Mookerjee J. explained that by taking section 23 as a whole, including clauses thirdly and fourthly, this basis of compensation, which was in accordance with the English Law, was justifiable.

Principle of re-instatement and Indian law.

Cases where "re-instatement" principle is required to be applied often arise with regard to acquisition of temples. When the question regarding cases of this nature was raised before the Legislative Council by Dr. Rashbehary Ghosh when the Act of 1891 was passed, Hon'ble Mr. (Sir William) Lee-Werner explained how he himself had dealt with a case and found no difficulty. "I simply ascertained", he said, "by enquiry what the cost of erecting the temple had been. I was also able to assess with perfect ease the value of the land on which the temple stood, and I was permitted to place in deposit at the treasury[58], to be paid on the call of the village headmen, the sum of money which I had awarded. In due course of time they purchased another site, the temple was removed, and a new temple set up where it was required". This was in fact the "re-instatement principle", and would apply equally where the temple was a private property.

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[57] *Baroda Prasad Dey, Chairman Serampur Municipality vs. Secy. of State* (1921) 49 Cal. 83, 25 C. W. N. 677, per Mookerjee and Buckland, J.

[58] This was before the procedure of deposit in section 31 of the Act of 1894 came into force. Such deposit would, since that Act, be made in the Court.

87. One important condition in the application of the principle, is, as expressly stated in the English Act, that "re-instatement in some other place is *bonafide* intended". If, for instance, in the case of Serampur Municipality cited above, the Municipality did not need any diversion of the drainage, the principle would not have applied. Similar was the position with another case which was mentioned in the Legislative Council by Mr Lee Werner where the deity in a temple on the land acquired was removed not for preservation but for submersion in a large reservoir. It follows that where a public road is acquired, and a substituted road is necessary, compensation has to be assessed for the cost of having land for such a new road and the cost of constructing it.

Re-instatement must be bonafide intended.

88. Under the English Law extravagant or indulgent claims on the basis of re-instatement, are deprecated; for instance where the owner insisted on the cost for purchasing just the adjacent land, it was disallowed (Browne and Allan's Law of Compensation, 2nd edition, page 657). But the question whether, in cases where the re-instatement principle is applied, the owner is entitled to the full cost of constructing a new building with similar accommodation and arrangements, or similar works such as a drain or road, or only such cost *less* the depreciation of the existing building etc., is not free from difficulty. A fair measure will probably be to assess the *depreciated* value of the building or other works as they are at the time of acquisition, though exception may have to be made in special cases of public works.

Is owner entitled to the cost of a new construction?

89. In England the principle of re-instatement is sometimes extended to private business premises or undertaking, where for special reasons the loss suffered by the owner cannot adequately be estimated by the ordinary rules of valuation [59]. This does

Re-instatement of private business.

[59] See Curtis on "Valuation of Land and Houses" 6th Ed. pages 249-50. Also Adkin and Lawrence, "Compulsory Purchase Acts", 2nd. Ed. pages 55-56.

not seem to have been recognised in any case before Indian Courts except so far as the amount of compensation is automatically covered by the application of clauses fourthly and fifthly of section 23, regarding damages for injurious affection and loss of earnings.

Mansions and historic houses.

But the greatest difficulty would be presented when acquiring a large aristocratic house or mansion, or houses which are called "period houses" with historic associations[60]. The former are often too large to be saleable at any figure commensurate with the cost of erection : while as regards the latter, they have a value of their own, but yet they have little value from the point of view of business or investment. Some of them, of both classes, may, however, be converted to schools club-houses, hotels or the like, or even residential suites : and when so convertible a market-value may be determined on such considerations. Special decorations or other arrangements, although they suited the owner's own personal convenience or likes and dislikes, have little or no commercial value, and a buyer with business ideas would not care to pay anything extra for them. In such circumstances, when determining the market-value the values of these have got to be discarded or at the most such constructions treated at their value as materials. The following observation was made by the Calcutta High Court in an early case[61] of 1874 :—"the market-value is not to be estimated by the costs

Special adaptations or works in a residential house.

[60] Referring to large "landed estates" comprising farms, cottages etc., Curtis observes—"Social considerations attached to the ownership of such landed estates and other advantages cannot be measured by years' purchase. Properties of this description may be treated in detail as regards the farms, cottages etc. on the basis of ordinary property". "But in valuation of mansion houses and park lands", the same writer continues, "considerations other than those of investments and percentage are found to influence the figures."

[61] *Collector of Hooghly vs. Rajkristo Mukerjee* (1874) 22 W. R. 284 (at p. 285).

of what have been done to preserve the land. It is not to be estimated by the money the owner may have spent in improving the land ; for, a man might spend a great deal of money on improvements, and yet the result was not increased to the amount which he had thought fit to spend." Apart from thoughtless works done on fanciful ideas, cases of tall buildings with special architecture as for a *thakurdalan* in a residential house, come on the border of this category. From the point of view of a buyer who comes purely on business principles, and expects to derive a proper return from his money, such *thakurdalan* may even be an impediment depreciating such market-value of the property. Yet in compulsory acquisition, the question of adequate compensation to the owner for the loss he sustains cannot be altogether ruled out. If he cannot get a proper value for *thakurdalan* on strict interpretation of "market-value", the doctrine of re-instatement may, in some cases, be applicable.

Special structures such as *thakurdalan*.

90. But to apply the principle of re-instatement in such cases, the condition precedent, according to the English law, is, as already stated, that—"re-instatement in some other place is *bona-fide* needed", that is to say that the owner would build a *thakurdalan* at another suitable place. It is controversial whether the same principle can be extended to cases of mansions or aristocratic dwelling houses for which, when acquired, the owner would have to provide elsewhere. So also with regard to a business premises of the owner himself when his business in it is of such a nature as is "particularly dependent on having a favourable situation in a particular locality and buildings adapted to their particular needs."

Re-instatement to be *bona-fide* needed.

Valuation of buildings and other structures.

91. It will appear from the preceeding discussions, that a building or structure on the land may have to be valued

either as a "standing structure" or as "materials" (called also "demolition value"). This valuation is a technical matter for experts. The usual method of valuing a masonry building as a "standing structure", is first to determine what would be the cost of constructing a similar but new building, with the rates of labour and values of materials prevailing at the time of acquisition, i. e. the notification under section 4 (*1*) of the Act. The figure thus obtained is called the "prime cost." For rough and ready application, this "prime cost" is usually put as so much per square foot of covered area or per cubic foot of the entire structure [62]. Obviously such a rate for the main building will be different from the rate for an unenclosed verandah and the like. It will also vary according to the size of the rooms, the number of thick walls, the height, the foundation, the nature of the construction (e. g. whether iron framing or full masonry etc.) and the quality of materials used.

Valuation of buildings as structure or as materials.

Prime cost of masonry buildings.

92. From the "prime cost" thus obtained a deduction has next to be made for depreciation in consideration of the age and condition of repairs of the existing building. Assuming that the building has been kept in good normal repairs, one method approved by experts is to deduct the first 5 years, and then take 5 per cent for every 6 years. In a case before the Calcutta Improvement Tribunal [63] the Court observed that taking the building as a second class building under the P. W. D.

Valuation of buildings as standing structure.

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[62] For "cubing", the height measurement is taken from the bottom of the footings to the middle of the roof. Howsoever put, the rate would have to be justified by figures obtained from "quantitative" valuation or what is also called "contractor's valuation", of what would be the cost of building such a structure. This is a laborious process, and it is usual to have a standard scale of rates per square foot for buildings ordinarily found: and then make additions to or deductions from such rates according to circumstances. But when contested or to be more accurate, the rates have to be verified by a proper "quantitative" valuation.

[63] Case no. 98 of 1914.

standard the depreciation may be calculated at the rate of 5 per cent for every 6 years. Much will depend upon the condition of repairs in which a building or other structure has been kept.

Valuation of buildings as materials.

93. A building or other structure may have to be valued as materials, i. e. at the value of the materials obtainable on demolition. Such value is usually estimated by taking a percentage of the "prime cost", according to the nature and condition of the materials as a buyer would pay for them, after deducting the cost of breaking down and removing. The Calcutta Improvement Tribunal, in a case where a portion of a building was treated as standing structure with a deduction of 55% as depreciation, treated the remaining portion as materials, and valued at 14 per cent of the prime cost [64]. For ordinary buildings 15 to 20 per cent of the prime cost is the proportion usually taken. Apart from the condition of the materials, if there is a good quantity of iron, e. g. joists, railing etc. the value as materials would be higher.

Huts and mud-kothas.

94. (1) "Huts" are light structures with sloping roofs of corrugated iron or country tiles, or even of straw or *golpata* leaf. These are supported on wooden posts, and in case of roofs of straw or *golpata*, often on bamboo posts. The frame-work of the roof is usually of bamboos, but sometimes of wood. The walls are usually made of split-bamboos covered over with mud, called "*dab-walls*" but they are sometimes of corrugated iron or even of wood-planks. The plinths in some cases are only of mud, and in others of brick and cement, with sloping rivetments along the outside to prevent damage by rain. The doors and windows are generally very poor, but sometimes of fairly good quality. The structure is partitioned usually into very small rooms for letting out to the poorer class of people. Height usually is about 9 feet. Sometimes these structures are two

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[64] Case No. 121 of 1925 (59 Bentinck Street).

storied, the middle floor being made of planks with mud, and in some cases even with concrete and cement. The posts in such case are thicker. These are called "*mud-kothas*". In exceptional cases the framing of the roof is of iron angles, and even the posts are of iron joists. Walls also, in exceptional cases, are built of bricks.

(2) The rates taken per square foot of covered area would thus vary according to the nature of these structures. As in the case of masonry buildings, it is usual to have a standard scale of "prime cost" rates for different kinds of such structures ordinarily found; and then make additions or deductions according to the nature of the particular structure. The figure arrived at, whether by the application of such rates as a rough and ready method or by detailed quantitative valuation, would give the cost of constructing such a new structure according to the rates of labour and values of materials at the time of acquisition. To find the value of the structure as a standing structure, a deduction would then have to be made for depreciation in consideration of the age and condition of repairs. The question of depreciation is, however, more complex in the case of huts and *mud-kothas*, than in the case of masonry buildings.

Valuation of huts as standing structure—depreciation.

One reason for this is that although the life of such a structure (except where iron materials have been used) with the same stuff as used initially, is much shorter, yet usually it is kept up by replacement of parts (e. g. posts, tiles etc.) from time to time in a manner not possible with a masonry building, and a structure though built years ago may be in quite good condition in this way. Valuers thus often prefer to take a floor-rate method on the existing condition of the structure,[65] instead of calculating the prime cost and then deducting from it a depreciation on an assumption of the age from the time of its initial construction. Where, however, the prime cost method was considered applicable, in the case of a country-tiled

[65] The Calcutta Improvement Tribunal has often preferred this method : Case No. 124 of 1926, re : Pr. no. 2 Gangadhar Banerji Lane.

hut 5 years old, the Calcutta Improvement Tribunal took a depreciation of 25 per cent as reasonable[66]. If, therefore, there are brick-materials, or iron-work for the roof or posts, the depreciation should be less.

When to be treated as standing structure and when as materials.

95. As in the case of masonry buildings, when valuing these structures for the purpose of Land Acquisition, the first question for settling is whether they should be treated as standing structures or at their value as break-up materials. If the structures belong to the owner of the land and the land itself is separately valued, the point for consideration will be whether the structures as they are, can or cannot be treated as sufficiently developing the land—to justify the land-value taken. They may where the land-value is low, say below Rs. 1,000/- per cotta ; but in a town like Calcutta where land-value is ordinarily much higher, these huts, when belonging to the owner of the land, are valued as materials, A buyer paying such high land-value would not find a proper return for his money unless he is free to build a suitable building on the land. He would calculate on having the site cleared by demolishing the structures. The only possible exception may be when from the special demand in a particular locality, the structures yield a sufficient return. When treated as materials, the value of the ordinary type of these structures is usually taken at 10 per cent of the value as standing structure. There can of course be no hard and fast rule, as much will depend on the condition and kind of materials used. If the wood-work be in good condition or where iron materials have been used, the percentage would be higher.

Valuation of huts as materials.

When huts belong to the tenant.

Usually, however, in Calcutta these structures do not belong to the owner of the land. When they belong to the tenant, the practice is to treat the structures as standing structure. This is consistent with the general principle in compulsory acquisition,

[66] Case No. 48 of 1915, re : 30 Chowlpatty Road.

viz. that every person should be adequately compensated for the loss he suffers [67].

Easements.

Land to be valued with the easement rights it possesses.

69. The land to be acquired may possess a right of easement over other lands, or it may itself be burdened with a right of easement possessed by other lands. In the former case, that is when the dominant tenement is acquired, the owner is entitled to the full value of the land inclusive of the advantages on account of the easement it possesses over other lands, and the land with the right of easement vests in the Government. In the latter case, that is when the servient tenement is acquired, the land must be valued in full as if no right of easement of a dominant tenement existed over it, because, on acquisition, the land would vest absolutely in the Government free from incumbrances, *vide* section 16 *ante*. The question as to how much of this value would go to the owner of the land acquired (the servient tenement) and how much to the owner of the lands of the dominant tenement, is a matter of apportionment ; but whatever this latter amount, it does not necessarily represent the amount of compensation to which the dominant tenement is entitled by reason of the extinction of its easement rights. The measure of this compensation is the diminution in the value of the dominant tenement which would arise from such extinction. The position was explained in a judgment of the Calcutta Improvement Tribunal in 1930 [68], thus—"Easements affecting the land acquired are interests in the land ; those interests are extinguished upon the Collector taking possession of the land acquired

Question—a mixed one of apportionment and valuation.

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[67] Calcutta Improvement Tribunal Case No. 89 of 1926, re : Pr. No. 56 Prinsep Street.

[68] Case No. 277 of 1929, Pr. No. 50 Karaya Road. Similar view had been taken by the same Tribunal in an earlier case No. 185 of 1922, Pr. No. 18 Nepal Bhattacharjee Street. See also notes under clause fourthly *post*.

by him under the Act, and the owner of the dominant tenement would be entitled to compensation under the first clause of section 23 (1) of the Act, in respect of the market-value of those interests considered as part of the land acquired, and also under the fourth clause of that enactment, in respect of the injurious affection, if any, of the dominant tenement caused by the acquisition and the consequent extinction of those easements: The compensation to be awarded by the Collector under the first clause of section 23(1) of the Act, would represent the market-value of the land acquired freed from the burden of easements ; and the value of that land to its owner was its value as subject to those easements, so that the difference between the amounts of those two values would represent the value of these easements considered as an interest included in that land ; and the amount of that difference would belong to the owner of the dominant tenement as the person to whom those easements belonged. The total damage suffered by the owner of the dominant tenement by reason of the acquisition injuriously affecting it, would be measured by the depreciation in the market-value of that tenement due to the extinction of the easements".

Illustration.

In this case the dominant tenement comprised a building just along the boundary of the servient tenement (the acquired land) which had ancient windows opening out on the latter. The Tribunal valued the disadvantage of the servient tenement at Rs. 300/-, and the diminution in value of the dominant tenement by reason of the closure of the windows at Rs. 700/-. The full value of the land of the servient tenement (as if there were no such easement rights) was thus reduced by Rs. 300/-. This amount was apportioned to the dominant tenement and the balance of Rs. 700/- viz., Rs. 400/- was ordered to be paid by the Government.

Easement cases to be approached from two points of view.

97. From this view of the matter, a case of easement rights in compulsory acquisition, has to be looked at in two aspects,—one, by how much is the value of the servient tenement reduced by the existence of the right, and two—by how much would the value of the dominant tenement be

reduced by the extinction of the right as would follow from the acquisition.

Compensation to the servient tenement.

98. An estimation of the first, is not free from difficulties. Taking the case cited above of abutting windows, the disadvantages may be analysed thus :—

(i) inability to build a compound-wall along the boundary and consequent loss of privacy and protection.

(ii) liability to leave a greater width of side-space (under the Calcutta Municipal Act, it would be 6 feet against the usual 4 feet), and consequent loss of available building space.

In the above case, the Tribunal estimated this at an amount which gave half [69] the full value of a strip of land four feet wide along the dominant tenement's building : but obviously this will depend upon the circumstances of each case, for example the nature of the windows, whether they exist on the ground floor, or whether the building with the windows is two-storied, or higher, the nature of the road or lane on which the building abuts and so forth.

Compensation to the dominant tenement.

99. As for the second aspect, viz., diminution in the value of the dominant tenement, it may be that the closure of the windows would not affect the light or ventilation of the rooms to any appreciable extent, or it may be that it will affect only a few rooms, or it may be that it will render the entire house uninhabitable [70]. Barring the last extreme case, the loss may be estimated by capitalising the amount by which the rental value would fall, and this was what was done in the case before the Calcutta Improvement Tribunal cited above.

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[69] The idea of half-value for easement such as a sewer, seems to be recognised in England : see examples 82 and 84 at pages 254 and 255 of Curtis's "Valuation of Land and Houses", 6th Ed.

[70] Curtis puts it thus :—(1) decrease of rent caused, or (2) cost of artificial light or appliance, or (3) giving up of the premises entirely as unfit for the trade or private enjoyment hitherto existing : "Valuation of Land and Houses", 6th Ed. page 383.

100. But although ordinarily the effect of acquisition is to vest the land acquired in the Government free from all incumbrances, that is with all such easement right fully discharged, it may not be really necessary to close an easement of light and air (through windows), for example when the land acquired would be thrown into a public road or a public park. In such circumstance it may be possible for the Collector to arrange with the owners of the dominant tenement, under section 31(*4*) *post*, and the easement right allowed to be retained, no compensation being paid on the assumption that it would be closed. In fact under the English law, the promoters may omit to treat the easement right during acquisition, and in such case the owner has no claim until his right is actually interfered with, and the basis of his claim, then, is the injury caused to the dominant tenement by such interference [71]. Whether the remedy in such event would be an injunction or money-compensation, are matters of general law on the subject. One established principle is that the dominant tenement is entitled not to the full benefit of the existing amenities of the light and air, but only of such portion of them as would be necessary for the ordinary purposes of the occupancy of the premises : for, if it were otherwise it would be "almost impossible for towns to grow and would formidably restrict the rights of people to use their own lands", and "progressive building of any town would be impossible" [72], or as was observed by Lord Hardwicke long ago in 1752 in the case of *Fishmonger's Company* [73] "it is not sufficient to say that it will alter the plaintiff's light, for, then no vacant pieces of ground could be built on in the city." The question does not arise directly in land acquisition, when it is sought to close such

Award by arrangement, retaining the easement right.

[71] *Clark vs. London School Board* (1874). 9 Ch. App. 120, 29 L. T. 903, 11 Digest 137, 283.

[72] *Colls vs. Home and Colonial Stores* (1904) A. C. 179. Also *Jolly vs. Kine* (1907) A. C. 1, and the Indian case of *Paul vs. Robson* (1914) 42 I. A. 180, 42 Cal. 46.

[73] *Fishmonger's Company vs. East India Co.* (1752) 1 Dickens 165, cited in Coll's case.

a window altogether: but it may arise when determining the difference between the value of the dominant tenement as with the windows, and its value as without them. The former value would not necessarily be the value with the full amenities in the present conditions, but it will be the value with only such portion of the amenities as is sufficient for the comfortable use and enjoyment according to ordinary requirements.

Right of way—common passage.

101. Easements of right of way over the land acquired present somewhat different aspects in compulsory acquisition. The strip of land over which the right is exercised is usually called a private "common passage", and so far as the dominant tenement (not acquired) is concerned, it is entitled to the diminution of its value by reason of the closure of the passage. As regards the servient tenement acquired, its lands, excluding the area of the common passage, would be valued as with the advantages of that passage: but its owner is also entitled to the value of his rights in the sub-soil of the land of the common passage [74]. This is taken at a certain proportion (usually one-fourth) of the full value of the strip of land, that is, as if there was no right of way over it.

Easement of drainage.

102. Where the dominant tenement has its drainage running through or underneath the land under acquisition, the owner of the former would be entitled to compensation for the cost of diverting the drainage, *vide* clause fourthly *post.* The question as regards the servient tenement would be what is the extent to which its market-value is affected by the existence of the drainage, and a collateral question may be whether the drainage is not required for the servient tenement also. In the case of sewered drains in the large cities, when the servient tenement is a residential property, the existence of manholes, the right of the owner of the dominant tenement to entry for repairs, and the liability not

Sewers in the large cities.

[74] *Secy. of State, vs. Dulali Bala Devi,* A. I. R. 1938 Cal. 75, 176 I. C. 847.

to build upon the land, are the detriments which affect the market-value[75].

Similar principles would apply *mutatis mutandis*, where there are water-connections or electric connections of other properties over the premises acquired.

Right of support.

103. Cases are often found in which the buildings on adjoining premises are so built that the roof of one (let us call it 'R') rests on a wall of the building which is under acquisition (let us call it 'Q'). Here the owner of 'R' would be entitled to compensation for the cost of building another wall to support his roof, as "injurious affection" under clause fourthly *post*, together with any loss for the period of disturbance. The value to which the owner of 'Q' would be entitled, is the market value of his property as affected by this right of support which the dominant tenement has on the wall of his building. Same principles would apply where a wall of the dominant tenement has its lateral support on a wall of the premises acqui~ed.

Valuation of Leaseholds.

Leaseholds are terminable interests as opposed to copyholds.

104. "Leaseholds" are interests in land for a limited period. The value of a leasehold is thus of the nature of a terminable annuity which would cease at the end of the specified period. In agricultural areas such leases are usually called "farmings", as opposed to tenancy interests which are regulated by the local laws and are usually permanent in character except that in some cases the rent may be variable from time to time. In urban areas, a leasehold proper would be a lease of land for a term of years, the lessce constructing a building or other structure

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75 Curtis in his "Valuation of Land and Houses" gives several examples which illustrate how these are valued in England. The damage to the land is taken at one-half of its value otherwise, besides diminution of amenities and other inconveniences.

and deriving a profit from it during the period. On the expiry of the term the land with the buildings or other structures built by the lessee, lapses to the lessor. The value of the leasehold to the lessee, is, therefore, such amount as would represent the "present value" of the net annual profit during the period, calculated at a certain rate of interest. For example if the net annual profit is Rs. 1000/- (say from rent after deducting all outgoings and charges), and the lease has 30 years to run, then calculating with 6 per cent interest, the "present value" of the annuity of Rs. 1000/-, is Rs. 1000 × 13·765[76] = Rs. 13,765/-.

Lease-holds in urban areas, where the lessee constructs the buildings.

105. The interest being only limited for a period, it is obvious that on the expiry of the period the capital sum invested in the beginning (e.g. in constructing the buildings or in any premium paid), would be lost. An annual "sinking fund" which by interest and compound interest[77] will roll up at the end of the term to the sum so invested, is thus an important item to be included in the deductions for outgoings, to get the net profit on which the capitalisation would be made. In some cases the lessee is permitted to remove the structures built by him: that is to say take them at their value as materials. In such case the "present value" of the probable price of the materials at the end of the period[78], would be credited to the lessee and included in his compensation.

Sinking fund deduction in such cases.

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[76] See any standard Present Value Table.

[77] It is usual to take this at the same rate as that on which the net profit is capitalised, on the assumption that the sinking fund might be invested in another property yielding the same return.

[78] Suppose it is estimated that the value of the materials on demolition at the end of the 30 years, would be Rs. 5,000. Its "present value" on 6 per cent table is Rs. 5,000/- × ·174 or Rs. 870, which means that if Rs. 870 be laid by on 6 per cent compound interest, it will amount to Rs. 5000 at the end of 30 years.

106. It is sometimes found that lands with buildings constructed by the owner are let out on long term leases with stipulation that the lessee would bear all costs of repairs and up-keep and the taxes. In such case, as deduction would be made for these costs of repairs etc., no question of deduction for "sinking-fund" would arise.

Where the buildings are constructed by the lessor.

107. More complex are cases in which there is a stipulation of renewal at the option of the lessee. In a Burma case [79], it was ignored as being too hypothetical : but then there were various conditions in the covenant which justified the finding that the contingency of renewal was too hypothetical to be of any commercial value. But the principle in English law is that the lessee is "entitled to be compensated in respect of any right he may have to a renewal of his lease." [80] The measure of the present value of this "renewal" right will depend upon the circumstances of each case, one important factor being the nature and condition of the building (assuming that it is the lessor's own which has been leased). For instance, when the lease is for 30 years with a right of renewal for another 30 years after that period, if the nature and condition of the building be such that it is not likely to be in a state fit for proper habitation after 30 years so as to command the rent, then the position would be so problematic that it would not be unreasonable to follow the view taken in the Burma case referred to above. Assuming that such is not the case, and that the building is a new and properly constructed one for which a full 60 years' calculation on the present fair rental may be justified, then the calculation may be made on a basis of a period midway between 30 and 60, (say 45 years), the reason being the clause of 'option' with the lessee and the speculation of contingencies which may or may not happen and which may incline the lessee not to continue. The suggestion of a

Leases with right of renewal

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79 *W. F. Noyu vs. Collector of Rangoon* 6 Bur. L. R. 91, 104 I. C. 878.

80 Halsbury Vol. 6 article 40, citing *Bogg vs. Midland Rail Co.* (1867) L. J. 4 Eq. 810 and other cases.

midway figure is, however, a mere guess, and a lower or higher figure will be perfectly justifiable according to circumstances.

Rising rents

108. Cases in which the rent is a progressively increasing one at certain intervals, would, at first sight, appear to be complex. But such stipulation is usually made on the assumption that the lessee would himself be receiving a larger rent, so that his net profit would remain almost constant. In such circumstance, there will be nothing wrong to calculate the value of the leasehold by taking the "present value" of an annual net income of this constant amount throughout the unexpired period. But where the position is that the stipulation would result in a gradual dwindling of the lessee's profit, the "present value" of the reduced net profits of the periods with higher rents, would have to be worked out. The process is somewhat complex [81], and in the case of *K. S. Banerjee vs. Jatindra Nath Pal* [82], the Calcutta High Court observed that in the absence of direct evidence as to what a willing purchaser would pay, the apportionment (i.e. the valuation of the leasehold interest) can be made only in a rough and ready way. See notes on Principles of Apportionment under section 30 *post*.

Valuation of leaseholds often affected by special stipulations in the lease.

109. Valuation of leasehold interests is often complicated by stipulations in the lease as to how much the lessee or the lessor would get in the event of acquisition of the land under the Land Acquisition Act. It is then a matter of apportionment of the total value according to these stipulations, vide section 30 *post*; but otherwise, it would

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[81] For instance if the lessee's rent for the first 10 years of the unexpired period be Rs. 100/- per month, and his net profit is Rs. 600/- per annum, and the rent for the next 10 years be Rs. 125/-, and the net profit estimated at Rs 500/- : then, the value of the latter at the beginning of the second period would be Rs. 500 × 7·36 = Rs. 3,680/-, and the "present value" of this amount (i. e. 10 years in advance) would be Rs. 3,680 × ·558 = Rs. 2,053/-. The first 10 years' value would be 6 0 × 7 36 = Rs. 4,416, and the total for the 20 years, would be Rs. 4,416 + Rs. 2,053 = Rs. 6,469. For the multipliers 7·36 and ·558, see the standard Valuation Tables.

[82] A. I. R. 1928 Cal. 476, 108 I. C. 259.

not be correct in principle that the lessor's interest (as for reversion *plus* that during the unexpired period of the lease) would be first valued, and the remainder of the full value (howsover ascertained), next assessed to the lessee. For, the lessee's interest is what is carved out of the owner's as *jus in re aliena*, and all the residue remains with the lessor or owner.

Lessee's interest is not the remainder or residue after the lessor's.

Theoretically, the total compensation for the property should be the sum-total of the compensation payable in respect of the interests of the lessor and the lessee[83]: and it may seem that if the value of the interests of the lessor has been obtained and also the total value, the value of the lessee's interest may be had by taking the difference between the two values. But such a result can be obtained only if all the three valuations, viz., the total, the lessor's interest and the lessee's interest, are made by the rental method. Otherwise, there would be difference as happened in the case of *Surendra Nath Sarkar*[83].

Modifications of clause first in certain local Acts.

110. Clause first of section 23(1) has been modified by a number of local Acts for acquisitions to be made for the purposes of those Acts. The modifications made with regard to what has been called "present disposition" or user and their effect, have been dealt with in paragraphs 79 to 84, *ante*. Other modifications are :—

Present disposition or user.

(1) the *material time* with reference to which the market-value is to be determined :

The main Act has now the date of the notification under section 4(1). The Calcutta Improvement Act, 1911 [Schedule, clause 9(3)(a)] has the date of publication of the declaration under section 6. The material time in the United Provinces Town Improvement Act of 1919, is the date of the issue of the notice under section

The material time.

[83] *Surendra Nath Sarkar vs. Pyari Charan Law*, A. I. R. 1938 Cal. 740, 42 C. W. N. 1191, 67 C. L. J. 582.

29(3), or of the first publication of the notification under section 36 of that Act, as the case may be [Schedule (10) (1)]. Under the City of Bombay Improvement Trust (Transfer) Act of 1925, this date is the date of the publication under sections 33, 44 or 53 of that Act [Section 64(3)].

Under the Calcutta Municipal Act, 1923 the date is the date of the declaration under section 6 (section 475). Under the Burma Act V of 1920, [clause 9 (3) of Schedule I] in acquisitions for schemes under the Rangoon Development Trust Act, 1920, the material date is the date of the resolution under section 38 (1) of the latter Act, if the land is required within 3 years of such date, otherwise "the date of acquisition".

(2) *damage for improvements made* shortly before the acquisition :—

Improvements shortly before acquisition.

(i) *The Calcutta Improvement Act of 1911* [clause 9 (c) of the Schedule of the Act], rules out improvements made within *two years before* the date of the publication of the declaration under section 6 "unless it be proved that the improvement was made *bona fide* and not in contemplation of proceedings for the acquisition of the land being taken under this Act". Clause 9 (bbb) [84] also rules out buildings erected within a street alignment without the permission of the Chairman under the Calcutta Improvement Act as required by section 63 (8) of that Act.

(ii) *The United Provinces Town Improvement Act of 1919* repeats the same as in the Calcutta Improvement Act, in clauses (d) and (c) of section 10(3) of its Schedule. It has a further explanatory provision in clause (g) of the Schedule ruling out returns of rent within the aforesaid period unless for addition or improvements allowed under clauses (d) or (c).

(iii) *The Calcutta Municipal Act 1923* has the same provision in section 475 proviso (iii) as in clause (c) of the Schedule to the Calcutta Improvement Act of 1911, but the period is put as *one year* instead of two years.

Clause (bbb) was inserted by the Amendment Act III of 1915.

The question in each case is whether the improvement is "bona fide". The burden of proof is thrown on the claimant by the language of the provisions, but presumably if the claimant can show that he has made the improvements with the due sanction of the municipality, his *bona fide* would be presumed. When he has done this, it will hardly be reasonable to expect him to be in a position to fore-see whether the acquisition would begin within two years from the time.

The City of Bombay Improvement Trust (Transfer) Act of 1925, does not rule out improvements made previous to the date of the publication for acquisition, but only those made after that date, barring repairs for maintenance.

Expenses incurred for better disposition.

(*3*) *Expenses incurred to secure better disposition* of the property, before acquisition :—

(*i*) *The Calcutta Improvement Act 1911*, [clause 9(*3*)(*b*) of the schedule] permits compensation for expenditure incurred to secure a more profitable disposition by reason of the owner having taken active steps for the purpose.

(*ii*) Schedule clause 10(*b*) of the United Provinces Act, 1919, and schedule clause 9(*b*) of the Burma Act of 1920, and proviso (*ii*) to section 475 of the Calcutta Municipal Act of 1923, also repeat clause 9(*3*)(*b*) of the schedule to the Calcutta Improvement Act.

It would seem that although damage for being prevented from making improvement may not be allowable, expenses incurred in active steps for effecting such improvements for better disposition may be claimed [85].

Unlawful or insanitary accommodation.

(4) Higher value derived for *unlawful or dangerously insanitary accommodation* :—

Clauses 9(*3*) (*d*) and (*e*) of the schedule to the Calcutta Improvement Act, 1911, clauses 10(*3*) (*e*) and (*f*) of the schedule to the United Provinces Town

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[85] See *Elias B. N. vs. Secy. of State*, (1927), 32 C. W. N. 860, A. I. R. 1929 Cal. 20.

Improvement Act of 1919, sub-sections (4) and (6) of section 64 of the City of Bombay Trust (Transfer) Act of 1925, clauses 9 (*c*) and (*d*) of the schedule to the Burma Act of 1920, rule out such increased value as arises from the land being put to a use which is unlawful or contrary to public policy, or from the building being so over-crowded as to be dangerous to the health of the inmates. Proviso (*iii*) of section 475 of the Calcutta Municipal Act of 1923 also rules out increased value for user which is unlawful or contrary to public policy, but it does not repeat clause (*e*) of the Calcutta Improvement Act.

Increase or decrease in value for land being within or near an alignment

(5) clause 9(*3*) (*bb*)[86] of the schedule to the Calcutta Improvement Act, 1911, rules out any increase or decrease of the market-value of land falling within or near the alignment of a projected street. Construction of any building on the site of a projected street, is restricted by various provisions of the Improvement Act and the Municipal Act, and any value obtained by a private sale of such land or land near such site would either be low or merely speculative.

Nature, age and condition of building.

(6) Section 64 (3) last part, of the City of Bombay Improvement (Transfer) Act, 1925, emphasises the importance of taking into consideration the nature and condition of the existing building, its probable life, and like matters.

111. Several important modifications are also made by clause 11 of the schedule to the Calcutta Improvement Act, 1911, which introduces a new section 24A for acquisitions made for the purposes of that Act. The same modifications are contained in the United Provinces Town Improvement Act of 1919 (schedule, clause 12), and the Burma Act V of 1920 (schedule, clause 11). The City of Bombay Impovement (Transfer) Act of 1925 though not introducing a new section 24A, contains all the several provisions of this section in sub-sections 2 (latter part), 5 and 6 of section 64 of that Act.

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86 Clause (bb) was inserted by the Amendment Act III of 1915.

The first of these modifications forbids consideration of any transaction regarding any interest in the land acquired, after the date of the declaration, so as to increase the amount of compensation to be paid for such land. It thus rules out all transactions relating to the land under acquisition subsequent to the date of the declaration, so far as they increase the market-value of the said land or the damages or expenses under clauses secondly to sixthly. It seems to follow that where the owner of the adjoining land purchases the land under acquisition after the date of the declaration, and the value of the latter is thus enhanced by reason of its amalgamation with his other land, this enhanced value cannot be claimed. This follows also from the provisions of present disposition or user in these Acts modifying clause first of section 23(*1*) of the Land Acquisition Act: see paragraph 79 to 84 *ante*. It also bars claims of damages or expenses by a person who has acquired an interest in the land as a lessee after the date of declaration. It does not however mean that the title of such a lessee or a purchaser *vis-a-vis* the lessor or the vendor, would be affected. See also paragraphs 12-13 of the notes under section 24 *post.*

Transaction after declaration not to increase the compensation.

The next modification is that if any building is in a defective state from a sanitary point of view or is not in a reasonably good state of repair, the compensation shall not exceed the sum which the building would be worth if it were put in proper condition *less* the estimated cost of putting it into such condition [87].

Buildings which are insanitary or in bad state of repair.

The third modification is that where the building is not reasonably capable of being made fit for human habitation, the compensation shall not exceed the value of materials of the building *minus* the cost of demolishing the building.

Building incapable of human habitation.

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[87] This method of valuation was followed in Case No. 40 of 1926 of the Calcutta Improvement Tribunal—see paragraph 58 *ante*.

Sub-section (1)—Clause secondly.

Scope of clause secondly.

112. Clause secondly refers to damage on account of standing crops and trees on the land at the time of the Collector's taking possession[1]. But trees (as things attached to the earth) existing on the date of the notification under section 4(*1*), would be included in the market-value under clause first[2], and clause secondly cannot, therefore, have any application to trees which were on the premises acquired, on that date. It contemplates damage for the value of the crops or trees that may have grown on the land between the date of the notification and the date of the Collector's taking possesion[3].

Measure of the damage for standing crops.

113. The compensation when paid under this clause is "damage" and not "market-value"; and the measure of the damage is, it would seem, the loss which the owner suffers by being deprived of the harvest, and not the price (if any) of the unripe crop. In other words, the amount would be about the same as the value of the ripe crop when reaped in due course[4]. The clause contemplates that the normal course of

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[1] There was no provision in the Act of 1870 corresponding to this clause and clause sixthly. The Act of 1894 put the material time for the market-value as the date of declaration under section 6 [since amended as the date of notification under section 4 (1)] and the suggestion of the Select Committee in their Preliminary Report, to provide for these contingencies between the date of the declaration (now notification) and the date of the Collector's taking possession, was embodied in the Act. But campare clause seventhly of section 24.

[2] See *Sub-Collector of Godavari vs. Seragam Subbaroyadu* (1906) 30 Mad. 151: also *Collector of Bareilly vs. Sultan Ahmed Khan* (1926) 48 All. 498.

[3] *Bhusan Chandra Samanta vs. Secy. of State* (1936) 40 C. W. N. 1034.

[4] It is usual, however, to postpone, wherever possible, taking possession of lands with standing crops till they are harvested so that the crops may be saved. No question of damage under clause secondly would of course arise in such circumstance, for there would be no standing crops at the time possession is taken.

cultivation of land or of planting must not be interrupted by reason of the notification under section 4(*1*)[5].

When the additional 15 per cent is to be awarded.

114. It is to be noted that sub-section (2) does not apply to damages under clauses secondly to sixthly ; it applies only to the market-value under clause first. Where, therefore, damage only would be awarded under clause secondly, as would be for crops and trees after the date of the notification under section 4(*1*), the additional compensation of 15 per cent cannot be claimed. But where the crops, plants or trees were in existence on the date of the notification, the award should be under clause first, with the additional compensation of 15 per cent [6].

Sub-section (1)—Clause thirdly.

115. Clause thirdly relates to injury to other lands of the person interested by reason of "severance", and the question of injury done in "any other manner" is dealt with in clause fourthly. When the bulk of the land of an agricultural tenant is taken, the small portion left may be useless for his purpose [1] : or, when the road-front portion of a person's land in a town, valuable as a building site, is acquired, the remaining portion may become altogether land-locked, and even if there be another access its value would be reduced. A private purchaser would not, of course, compensate his vendor for such loss, but in compulsory acquisition such loss must be compensated. Similarly a

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[5] Do "trees" include seasona fruits which may have grown between the date of the notification and the date of taking possession and which may be existing on the latter date ? The word "fruits" is not used. Another objection is that where the land has been valued as garden-land, it would mean taking the value of the produce (though of one season only) twice over ; but it is equally so for standing crops like paddy.

[6] *Bhusan Chandra Samanta vs. Secy. of State*, 40 C. W. N. 1034.

[1] Under the English law if the lands be not situated in a town or built upon and the remaining area be less than half an acre, it must also be acquired : section 93 of the Lands Clauses Consolidation Act, 1845.

portion only of a house, building or manufactory may be acquired and this may impair the value of the remaining portion. The damage thus caused has to be compensated for [2].

What constitutes severance.

The question whether there has been any damage by reason of severance is a question of fact in each case; and under English decisions, it is not necessary that the part taken and the part left should be in actual contiguity. It is sufficient that the part taken is so connected or related to the part left that the owner of the latter is by reason of the severance, prejudiced in his ability to use or dispose of it to advantage. The principle as explained in *Cowper Essex's* case [3] is that "where several pieces of land owned by the same person are so near to each other and so situated that the possession and control of each gives an enhanced value to all of them, they are lands held together within the meaning of the Acts, so that, if one piece is compulsorily taken, the owner will, as a general rule, be entitled to damage by severance and injurious affection to the remainder" Even the fact that a railway or a road intervenes, does not, if other requirements are satisfied, alter the position[4]. It is not necessary also that the owner should hold both parts under the same title[5].

As for sub-jacent severance see notes under the Land Acquisition (Mines) Act, *post*.

[2] Section 49 *post*, provides for an alternative remedy of the owner of demanding the acquisition of the remaining portion, but this does not apply unless the property is a house, building or manufactory.

[3] *Cowper Essex vs. Acton Local Board*, (1889) 14 A. C. 153, 58 L. J. Q. B. 594. The bare fact that the claimant was the common owner of both parcels is insufficient, *Holditch vs. Canadian Northern Ontario Rail Co.* (1916) 1 A. C. 536.

[4] *Cowper Essex vs. Acton Local Board*, ibid: *Rockingham Sisters of Charity vs. R.* (1922) 2 A. C. 315 P. C.

[5] *Holt vs. Gas Light and Coke Co.* (1872) 7 Q. B. 728 where one part was held under a lease and the other part only by a verbal agreement.

116. The measure of damage by severance, is the diminution in the value of the remaining land of the owner. For example, where a piece of land in a town has a certain market-value by reason of its situation on a main road, and a portion of it along the road is acquired, it is obvious that the remaining portion would not have the same value. If it has any other access, its value would be reduced to what it would have only with that access; and if it has no other access it would be altogether land-locked and any value for it may be difficult to obtain in the market. So in a case in which a portion only of a residential holding was acquired rendering the remaining portion useless, the Calcutta High Court held that compensation should be paid for the entire holding owing to damage caused by the severance [6].

Measure of damage for severance.

Where portion only of the road-front land is acquired, although the remaining frontage on the same road would not be lost, yet the portion behind the land acquired would be what has previously been called "recessed land", and its value would be reduced; and it may be, the value of the whole of the remaining land, would be affected. The owner would be entitled to compensation for the diminution of the value of his remaining lands [7].

But the acquisition of the road-front land may be simply for widening the road itself. In such case there is no diminution in the value of the remainder, unless it be reduced to an unbuildable site. Where there is a house on the land, assuming that section 49(1) is not applied for its entire acquisition, it may be necessary for the owner to build a new compound wall, or alter the facings etc. of the portion left. He may be entitled to compensation for the necessary expenses.

Severance may not cause any diminution in the value of the remaining land in the ordinary sense, but it may cause injury by

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[6] *Sarat Chandra Bose vs. Secy. of State* (1904) 10 C. W. N. 250.

[7] *Gajanan Vinayak vs. Asst. Collector, Salsette,* A. I. R. 1921 Bom. 54, 85 I. C. 11.

way of difficulties or increased cost in continuing the existing use of the land ; and such injury must be compensated for. In the case of *Baraoora Tea Co.*[8] where the middle portion of a tea-garden was acquired for a railway, and this had the effect of substantially increasing the working cost of one-half of the garden, it was held that the owner was entitled to 10 times the annual increased cost for damage on account of severance. Such case may, however, be as well treated as covered by clause fourthly.

Sub-section (1)—Clause fourthly.

Scope of the clause.

117. While clause thirdly, refers to injury to other lands by reason of "severance", clause fourthly, contemplates injuries in *any other manner*, and includes also injuries to moveable properties and to the earnings. But the conditions are the same, viz., that the claimant is a person interested in the land acquired and that the injury is due to the acquisition and is such as is sustained at the time of the Collector's taking possession.

Injury by user of the land for the declared purpose

118. Injury to other lands of the person interested, in a manner other than mere "severance", arises mainly when it is caused by reason of the uses to which the land acquired is put for the execution or furtherance of the purpose as declared under section 6, or, as under the English law, as authorised by the special Acts. If the injury be due to any act other than what is necessary for the declared (or authorised) purpose such injury would, if it constitutes a nuisance or actionable wrong, be the subject of separate suit. But if the injury be such as would arise from the user of the acquired land for the purpose for which it is acquired, and such injury can be reasonably anticipated, under the English law it is a subject for compensation in the land acquisition proceeding

English law

8 *Baraoora Tea Company vs. Secy. of State* (1901) 28 Cal. 685.

itself. The principle was thus explained in a very early case[1] (1864) :—"It is by the Act of Parliament, and the Act of Parliament[2] only that you have done the acts which have caused the damage ; without the Act of Parliament everything you have done, and are about to do, in the making and using the railway, would have been illegal and actionable, and is therefore, matter for compensation".

In other words compensation is payable in land-acquisition, when the "authorised" (or "declared") purpose is in itself a nuisance to other land and constitutes an actionable wrong. The following English cases are illustrative :—

(1) Where a mill existed so close to land acquired for a railway that when the railway would be constructed there would be danger of fire from the sparks of the engines using the railway the reduction in value of the mill would be a subject of compensation[3].

(2) Where land was taken for sewage-works and other land held therewith was used for building purposes, the reduction in value of the building land because of the existence and use of the sewage works would properly be taken into account in assessing the compensation[4].

(3) The use of land for military purposes may cause injurious affection to the remaining land, because of the firing of guns and the incidentals of camp life[5].

(4) Where injury to neighbouring houses on the land of the same owner due to erection and carrying on of a school, was anticipated, compensation was awarded[6].

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[1] Re : *Stockport, Timperly etc. Rail Co.* (1861) 33 L. J. Q. B. 251, 10 L. T. 426.

[2] This corresponds to the purpose of acquisition as declared under section 6 of the Land Acquisition Act of 1894.

[3] *Hammersmith and City Rail Co : vs. Brand* (1869) L. R. 4. H. L. 171.

[4] *Cowper Essex vs. Acton Local Board,* ibid.

[5] *Blundell vs. R.* (1905) 1 K. B 516, 92 L. T. 58.

[6] *R. vs. Pearce, Exparte, London School Board* (1908) 78 L. T. 681.

(5) Where a waterworks company fouled a stream by drainage : *held* that compensation could not be claimed under the Act (Land Acquisition) as the action was not authorised by their statutory powers (viz. the authorised purpose of the acquisition), but the company might be restrained by injunction[7].

(6) Interference of a flow of water to which there was no prescriptive right, did not justify compensation because the interference was not otherwise actionable[8].

Indian Law.

119. A difficulty may seem to arise in the application of these principles in India owing to the use of the expression "at the time of the Collector's taking possession of the land" in clause fourthly (also thirdly). Injury by reason of the user of the land acquired *after* Collector's possession, even though such user be for the "declared" purpose of the acquisition, cannot strictly be brought within this clause. At the same time it is not covered by the matters which cannot be taken into consideration as enumerated in section 24[9]. In a case of 1897[10] the Calcutta High Court held that under clause fourthly "compensation can only be given for the damages which had actually at the time (viz. the Collector's possession) been sustained without reference to a contiuuing damage caused by the acquisition" : but in later cases the English rules have been consistently followed ; in other words the Courts have not treated the enumeration in section 23 (*1*) as exhaustive, and have acted on the broad fundamental principle in compulsory acquisition that every person interested who suffers any loss by reason of the acquistion, including the purpose for which the acquisition is made, is entitled to compen-

Clause fourthly not taken as exhaustive, and English principle followed.

[7] *Clowes vs. Staffordshire Potteries Waterworks Co* : (1872) 27 L. T. 521, L. R. 8 Ch. 125.

[8] *R. vs. Bristol Dock Co.* (1810) 12 East 429.

[9] Clause fourthly of sec. 24 refers to damage to the *land acquired* and not to damage to other lands.

[10] *Collector of Dinajpur vs. Girija Nath Roy* (1897) 25 Cal. 346.

satation. In the case of *Gurudas Kundu Chaudhury*[11] (1898), where the Calcutta Corporation acquired a plot of land for a sewage depot, out of the middle of the claimant's land, it was held (following the principle of English law in *Cowper Essex's* case) that such depot must injuriously affect the value of the claimant's other lands, and damage was accordingly awarded at 15 per cent of the otherwise market-value of the land within a radius of 300 feet. The Calcutta Corporation stated before the Appellate Court that they did not intend to use the acquired land for sewage-depot, but even that did not exonerate them, the High Court observing :—"We must look at the matter as it stood when the declaration was made by the Government to acquire the land for the the purpose of erecting this depot. ** I think the present claimants are entitled to say—we were brought here to meet the case of your acquiring this land for the purpose of using it as a sewage depot, and we are entitled to have our compensation assessed upon that footing. It is very well for you now at this late stage to say you are not going to use it for a sewage depot, but for all we know you may be going to use it for something yet more offensive to us. We are entitled to treat the matter as it stood when you made your declaration (i. e., the declaration under sec. 6), and that is the only footing upon which it can properly be dealt with."

In a case of 1908[12], a further question arose whether injurious affection by such user even when it was in pursuance of the purpose declared in the declaration under sec. 6, was a matter for separate civil action and not a matter for award of compensation under the Land Acquisition Act, it was held that this was a proper matter for the land acquisition award. In this case land was acquired for a Rifle Range, and the view taken by the High Court was that so far as it could be reasonably anticipated that the Range would interfere with the owner's tea-garden behind the butts, to that extent the value of the land had been depreciated and the owner was entitled to

[11] *Gurudas Kundu Chaudhury vs. Secy. of State*, 18 C. L. J. 244.

[12] *Wernicke vs. Secy. of State*, (1908), 13 C. W.N. 1046.

compensation. It was further observed that it was no answer to his claim to say that any injury that may be caused in future by the use of the acquired land as a rifle range (the declared purpose for which it was being acquired) would be only actionable (i. e. by a separate suit).

So also in the Burma case of *Indo-Burma Petroleum Co.* [13] of 1911, it has been held that the words "sustained at the time of Collector's taking possession" include "not only damage that has been actually caused at that time but also what can be reasonably anticipated or estimated".

In the case of *Baraoora Tea Co. vs. Secy. of State* (1901), 28 Cal. 685, the difficulties and increased cost for which damage was awarded were circumstances which arose from the construction of the Railway *after* the acquisition and the obstructions caused by such construction and working of the Railway.

No separate suit lies if damage could be reasonably anticipated: English law.

120. The basic principle thus is that in assessing compensation for severance and injurious affection all damages that can be reasonably foreseen and are not too remote should be taken into account [14]. The view taken by the Courts in England goes further,—the compensation has to be settled once and for all [15], and in any subsequent proceeding all such reasonably anticipated damage will be deemed to have been taken into acount at the time of the acquisition [16], that is to say no

[13] *Indo-Burma Petroleum Co. vs. Collector of Yenangyaung* (1911) 4 Bur. L. T. 250.

[14] This principle is laid down in the early case of Re: *Brogden and Llynvi Valley Rail Co.* (1860) 30 L. J. (C. P.) 61 and other cases cited in Halsbury vol: 6, art. 47.

[15] *Croft vs. London & N. W. Rail Co.* 32 L. J. Q. B. 113.

[16] *Mercer vs. Liverpool, St. Helena etc. Rail Co.* (1904) A. C. 461, 1 K. B. 652. In the case of *Rameswar Singh vs. Secy. of State* (1907) 34 Cal. 470, 11 C. W. N. 356, which was a separate suit, it was held that such separate suit was maintainable; but there were other circumstances in the case, viz. that notices were not properly issued, that there was misunderstanding that the Collector would deal with the particular claim (re: loss of ferry-income) separately and there were other serious irregularities which in themselves would justify a separate suit.

separate suit would lie later for such damage. The legal position is not, however, clear yet as regards unforeseen damages [17]; but as regards cases where mines are discovered, there are provisions in the Land Acquisition (Mines) Act XVIII of 1885 (sections 5, 9 and 10) and in the English Railways Clauses Consolidation Act of 1845 (section 81).

—no separate suit lies.

Question as regards unforeseen damages : mines.

121. The expression "*his* other property" in the clause implies that the claimant must be a person interested in the land acquired either as owner or occupier. But under the English law damages may be claimed by persons who may not be so interested, though the Courts have given a somewhat limited meaning [18] to the words "injurious affection" in such cases. A definition of "injurious affection" as applied to cases where no lands are taken from the owner is given in *McCarthy vs. Metropolition Board of Works* (1872) L.R. 7 C.P. 508,—"Where by the construction of the works there is a physical interference with any right, public or private, which owners or occupiers of property are by law entitled to make use of in connection with such property, and which gives an additional market value to such property, apart from the uses to which any particular occupier or owner might put it, there is a title to compensation if, by reason of such interference, the property, as a property, is lessened in value." Besides the fundamental rule that the damage must be such as would otherwise be a nuisance or an actionable wrong [19] and that it arises from the execution of

Injurious affection of other owners.

[17] Halsbury 2nd Ed. (1932) Vol: 6, P. 52—"It has not yet been decided whether damages which are neither foreseen nor guessed at can form the basis of a second claim for compensation."

[18] Otherwise the promoters would be overwhelmed with mass of frivolous claims : Adkin and Lawrence, Compulsory Purchase Acts, p. 61.

[19] Where ancient lights were interfered with by the acquisition and its purpose, compensation would be payable. *Eagle vs. Charing Cross Rail Co.* (1867) 16 L. T. 593, 36 L. J. C. P. 297. But where flow of

the purpose declared or authorised [20] by the acquisition, the injury must be an injury to land and not merely a personal injury or an injury to trade, [21] and it must be such as is caused by the construction [22] of the works and not by their subsequent

water to which there was no prescriptive right was interfered with, no compensation was payable *R. vs. Bristol Dock Co.* (1810) 12 East 429 : or where a railway embankment overlooked property and destroyed its privacy, as this was not tortious Re : *Penny and South Eastern Rail Co.* (1857) 26 L. J. Q. B. 225, 29 L. T. 124. On the point about privacy, see notes paragraph 124 *post.*

[20] Where a Waterworks Company fouled a stream by drainage,—it was a matter for separate action (and not compensation in land acquisition) as such fouling was not part of the acts authorised by the purpose of the acquisition : *Clowes vs. Staffordshire Potteries Waterworks Co.* (1872) 8 Ch. 125, 27 L. T. 521.

[21] In the case of *Rameswar Singh* ibid under foot (16), loss on account of a ferry near the land acquired (not abutting such land) where a railway-bridge was projected, was held as not compensateable because the ferry right was a mere franchise. Under this class comes earnings of persons who merely work on the land acquired. Such persons are not entitled to compensation : *Secy. of State vs. Shanmugaraya Mudaliar* (1893) 16 Mad. 369.

[22] *Hopkins vs. Great Northern Rail Co.* (1877) L. R. 2 Q. B. D 224, 46 L. J. Q. B. 265, where a person who was not the owner of the land acquired, claimed damage for loss of ferry income on account of the traffic carried by a railway over a bridge constructed on the land acquired, and also on account of the foot-way of the bridge, it was held that as the loss was not due to the "construction" of the bridge but only to its "user", claim for damage was not maintainable in as much the claimant was not the owner of the land acquired. So also where no part of the claimant's land was acquired, depreciation in the value of his houses near-by, by reason of the vibration caused by trains passing, he was not entitled to compensation : *Hammersmith & City Rail Co. vs. Brand* (1869) L. R. 4 H. L. 171 *Holditch vs. Canadian Northern Ontario Rail Co.* (1916) 1 A. C. 114 L. T. 475. So for injury by noise. and smoke of a Railway when in use after construction, *A. G. vs. Metropolitan Rail Co.* (1894) 1 Q. B. 384, 69 L T. 811. Cases where the promoters fail to take sufficient care to prevent damage, while executing their authorised works, are distinct, and they will be liable to an action for such damage ; *Fairbrother vs. Bury Rural Sanitary Authority* (1889) 37 W. R. 544.

user. This last ruling makes an important point of difference from claims by the same owner [23].

122. Injurious affection to owners of other lands, usually arises from infringement or disturbance of easement right such as for air, light, water or way [24]; and as by the definition in section 3(b) *ante* of the Land Acquisition Act "person interested" includes a person interested in an easement affecting the land, most of such cases would be covered by the language of this clause as well as of clause *thirdly*. As regards the measure of damage on account of loss of easement, see notes paragraphs 96 to 103 *ante* under "Easements".

When such other owner has a right of easement over the land acquired.

123. When the injurious affection of another owner's house arises from the closure of that owner's right of way over the land acquired, he has an alternative remedy under section 49(1) of compelling the acquisition of his house, if the land over which the way exists is such that it, by reason of the right of way over it, can reasonably be treated as part of

Alternative remedies: acquisition under sec. 49(1), or arrangement under sec. 31(4).

[23] What then is the remedy of a neighbouring owner no portion of whose land is taken but who is also injured by the works for the purpose of which the adjoining land of another owner is acquired? For instance in the case of *Gurudas Kundu Chaudhury* 18 C. L. J. 214—according to the view taken by the High Court, the value of lands to a radius of 300 ft. would be reduced by 15 per cent on account of the sewage depot. The injury is none-the-less an injury when the land within this radius belongs to a different owner. When it belongs to a different owner, he may not have any remedy in the land acquisition proceedings, but his right to sue for damages or for injunction when the cause of action arises, viz. when the sewage depot is started, would not seem to be barred.

[24] Party was entitled to compensation in land-acquisition :—(i) Where a public high way was obstructed and deviated whereby the access to certain premises was made less convenient and they were made less suitable for shops. *Chamberlain vs. West End of London etc. Rail Co.* (1862) 32 L. J. Q. B. 173 ; (ii) where a private right of way was obstructed by a level crossing : *Glover vs. North Staffordshire Rail Co.* 20 L. J. Q. B. 376, 16 Q. B. 912.

the house and required for the full and unimpaired use of it. There is also the alternative of an arrangement by agreement with the Collector under section 31(4) by which the right of way may be maintained or an alternative right of way provided in lieu of money-compensation for injurious affection. So also for right of air and light through abutting windows ; and arrangements are sometimes made with the owner of the dominant tenement by which he is allowed to purchase a strip of land along-side the windows.

Infringement of privacy : protection.

124. Injurious affection may arise from infringement of privacy by reason of acquisition or the use to which the acquired land may be put, which may result in a diminution of the value of the claimant's property (not acquired), or require him to incur expenditure for protection and privacy. The position is discussed at some length in the case of *Prasanna Kumar Dutta vs. Secy. of State* (1933) [25]. In this case the High Court of Calcutta endorsed the view taken in *Re : Ned's Point Battery* [26] (a case of construction of a camp) in which it was observed that—"the construction and use of a camp may depreciate the value of adjoining parts of the estate ; for such depreciation from loss of privacy, loss of amenity, vulgarization of the neighbourhood, and the natural concomitants of a camp, compensation may be assessed". There are also numerous Indian cases [27] in which the right of privacy has been recognised. In the case of *Prasanna Kumar Dutta*, the damage was assessed at the cost incurred in building a wall to maintain privacy against the gaze of passengers in trains on the railway for which the land was acquired.

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[25] A. I. R. 1934 Cal. 525, 61 Cal. 245, 151 I. C. 160, 38 C. W. N. 239.

[26] (1903) 2 I. R. K. B. 192. But contra : Re. *Penny and South Eastern Railway* (1857), 26 L. J. Q. B. 225.

[27] *Sri Narain Chowdhury vs. Jadoo Nath Chowdhury* (1900) 5 C. W. N. 147 : *Md. Abdoor Ruhim vs. Birjoo Sahoo* (1870) 14 W. R. 108 : *Sreenath Dutt vs. Nand Kishore Bose* (1868) 5 W. R. 208 : *Gokul Prasad vs. Radho* (1885) 10 All. 358.

No separate claim for injurious affection when "accommodation works" are provided in case of Railways

125. Injurious affection of other lands is often occasioned by railways for which land is acquired, when they obstruct drainage, water-ways, road-ways etc. For such cases there is special provision in sections 11 and 12 of the Indian Railways Act IX of 1890 (corresponding to sections 68 and 69 of the English Railways Consolidation Act, 1845) for what are called "accommodation works", such as convenient and necessary crossings, bridges, arches, culverts, passages over and under, and so forth, as may be decided by the Governor-General in Council[28].

Meaning of earning.

126. *Injurious affection of earning* :—"Earning" means what is acquired by labour, service or performance. Income which is or may be derived by the letting out of the land acquired or of the building thereon is not "earning", and loss on account of such income would be covered by the compensation for land under clause first[29]. The question of injury to earning would therefore arise with reference to the money earned from a shop or business on the land. But the claimant must have an interest in the land itself, either by ownership, lease or occupation in it, and not a mere workman. Workmen are no more interested in the land than a quarry-man, a ploughman or a digger[30] : The reason explained by their Lordships of the Privy Council in the

Must be interested in the land—and not mere workmen.

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[28] In case of difference between the Railway authorities and the persons affected as regards kind or number of any such accommodation works or of the sufficiency of such works and so forth, under the English law it has to be settled by two Justices, and under the Indian Railways Act the matter is finally settled by the Governor-General in Council.

[29] Calcutta Improvement Tribunal Case No. 84 of 1921 (Pr. 11 Lower Chitpore Road). Also *Secretary. of State vs. Rawat Mull Nopany*, A. I. R. 1938 Pat. 618.

[30] *Secy. of State vs. Shanmugaraya Mudaliar* 16 Mad. 639, 20 A. I. 80. The same follows from the principle in English law that interest in chattels and personal rights confer no right to compensation in Land Acquisition : *Clout vs. Metropolitan and District Railways Joint Committee* (1883) 48 L. T. 257.

case of *Shanmugaraya*, is that "no compensation is given to persons not interested in the land on the ground that their earnings may be affected by the change of ownership, or indeed on any ground". Under the English law compensation is confined to the owner of the land or to a tenant whether he be a tenant-at-will or a tenant on a lease for term, long or short (secs. 120 to 122 Lands Clauses Consolidation Act, 1845). In a bazar in India, there are several classes of vendors—(1) those having fixed shops where they keep their stores day and night; (2) those having fixed floor space where they come only during the bazar time: (3) those having no fixed floor space, but who come and occupy as they find available space at the time. The cases of (1) and (2) are obvious, but as regards (3) controversial. People of class (3) pay a rent or charge for the time they occupy and though some of them do not come every bazar-day, there are others who come regularly. Ordinarily these squatters in class (3) are not paid any compensation: their cases are more or less of the nature of personal rights or of mere licenses[31] for which no claim for compensation can be made under the English law.

Vendors in bazars —squatters.

127. Apart from cost of removal and expenses incidental to the business itself which are dealt with in clause *fifthly* (see note under that clause, *post*), matters for consideration in estimating injury to earnings, (or what is commonly called "loss of earning"), may be analysed thus :—

Matters for estimating loss in earnings.

(*a*) Depreciation of fixtures.

(*b*) Depreciation of stock.

(*c*) Loss on account of "goodwill".

(*d*) Loss on account of credit-sales.

128. *Depreciation of fixtures* :—If the fastenings of the fixtures are of a permanent nature or such as are of use only when so fastened to the land or building acquired, they come within the

Depreciation of fixtures.

Frank Warr & Co. vs. London County Council (1904) 1 K. B. 718.

meaning of "land" and therefore would be valued and paid for under clause *first* (as for this aspect of "fixtures" see notes at page 13 *ante*). If not so, or if in the case of a permanently fastened, but still removeable fixture, its owner proposes to remove it, the cost of removal, re-fitting (including any adjustments for the new place) and depreciation in the removal, have to be estimated and compensated for [32]. The principle is that "if the right to compensation is established, the amount of compensation is to be determined by the ordinary rules applicable to damages in actions for tort" : Halsbury, 2nd Ed. Vol. 6, Article 56.

Depreciation of stock.

129. *Depreciation of stock* :—This arises from delays and hard usage attendant to removal. To a certain extent, therefore, it comes under clause *fifthly*. The measure of the damage will depend on the nature of the trade and the stock. A glass-ware merchant would be justified to claim a high percentage of breakage. So a grocer for wastage : while an iron-monger is less likely to suffer on this account. Taking delays into account the average allowances may, according to English authorities, vary from 10 to 25 per cent.

Goodwill & earning.

Meaning of goodwill.

130. *Loss on account of "goodwill"* :—It has first to be remembered that the goodwill of the trade, trade-mark or the like is not acquired, and the person is free to shift his business to another place with the same name, trade-mark etc. For the purpose of compensation in land-acquisition, goodwill may be taken to mean the probability of the business being maintained at a certain level

[32] *Gibson vs. Hammersmith Rail Co.* (1863) 32 L. J. Ch. 337, 8 L. T. 43. "In the case of shops and offices particularly, the risk of the trade fixtures being ill-suited to the new premises is very great, and as much as 75 per cent of their value is a common allowance for depreciation in such cases" :—Adkin & Lawrence, page 57. Each case has to be judged on its own circumstances.

Measure of the loss in goodwill.

of profit when it is continued at the same place. The measure of the loss in the value of the goodwill would thus be the diminution of this probability when the business is removed to a new place, or it may be that the business would be altogether extinguished. The chances of getting a new site in the same locality or on the same street are thus an important factor. The following observation *per* Bramwell, L. J. in *Bidder vs. North Staffordshire Rail Co.* [33] is illustrative :—"it is as though a house in a street were taken, where a man carried on business, and there were other houses in the same street to be had, to which the business could be transferred with no loss of goodwill. In such a case no compensation for goodwill ought to be given. If the rent was greater, that ought to be compensated for ; if the lease was shorter, that ought ; and if other circumstances of loss or precariousness, that ought" [34].

No hard and fast scale possible for wide variations.

Stray and sweeping acquisition.

It follows that a scale of compensation justified in the case of a stray acquisition of a single premises on a street, cannot apply where there is a sweeping acquisition of a large area in a locality (as for instance in a Town Improvement Scheme), as a result of which not only it would be difficult for the owner to get another place, but the whole aspect of the locality and the market and attractions for the particular business, may altogether change. The nature of the business is always an important matter for

[33] (1878) 4 Q. B. D. 412, 48 L. J. Q. B. 248.

[34] On this principle the Calcutta Improvement Tribunal in a case in which the man had removed 800 feet off and the cost was Rs. 4/- only, *held* that such shifting did not involve any loss of earning (*Case No.* 99 *of 1922* Pr. 8, St. James Square). Again where the new house taken had a rent of Rs. 870/- (similar accommodation) against Rs. 240/- per month, 6 times the difference was allowed : *Case No. 87 of 1923*, Pr. 66, Bentinck Street. The same Tribunal in *Case No. 100 of 1925* (Bentinck Cycle Works), analysed the matters for consideration in estimating loss of earning, thus :—(1) other available place in the neighbourhood : (2) the comparative rent of such place ; and (3) precariousness of the tenure.

consideration. The following quotation from Adkin & Lawrence, is illustrative :—

"The small shop-keeper, who does a retail business across the counter, will lose the greater part of his goodwill if he is unable to obtain new premises within reach of his limited circle of customers. On the other hand, a wholesale manufacturing concern, which transacts the bulk of business by correspondence, will be almost, if not quite, unaffected by a change of premises. Between these two extremes there is an infinite variety of cases in which a change of premises is bound to depreciate the value of the goodwill to a greater or less degree".

Place of special mart.

Whether the place from which the person is expelled is a special mart for any particular kind of business, *e.g.* books, stationery goods, cloth, grains etc., is an important element for consideration particularly so, as already stated, when there is a sweeping acquisition disturbing the aspect of the locality and making the chanches of getting another suitable place very precarious. To quote from the Proceedings of the Legislative Council :— "The compulsory change of a place of business may result in a serious loss to the persons concerned. *Locality often possesses an element of convenience, which has an important value in connection with business,* and if a person enjoys such special advantage through having established himself in a particular site it may be for a long period, it seems to be reasonable that he should be entitled to compensation when he is disturbed for the benefit of the general public."

The greatest sufferers in cases of acquisition of a "special mart" are the owners of small shops which thrive mainly because they exist close to bigger shops which, by their extensive advertisements and established reputation attract customers to the locality. Allied to them are business with special advantages, *e.g.* refreshment shop near a theatre or cinema, or tiffin-room near a school or college and so forth.

Just as a large business-concern, with an established reputation by name may not be as much affected by a change of place

as a small shop-keeper, so also in the case of professional people, as for example medical practitioners. Those who have wide—spread reputation would be found out wherever they go: but in the case of a practitioner with a localised practice, his position may be altogether different, particularly when there is a sweeping acquisition of the locality.

131. These are the various matters which have to be taken into consideration in estimating the measure of damage. A number of months' income on the average of the income during the period preceding the acquisition is sometimes taken to estimate the compensation. It would be quite right when the position is that the business would, as a result of the acquisition, become altogether extinct [35]; but otherwise, it is obvious that any hard and fast rule of so many months' income cannot be laid down. The measure of the damage, as has already been observed, is the diminution in the future profits which would result from the enforced change of place [36]: and so far as it is necessary for making a comparison, previous income may be important; but taking of so many months' or years' purchase

[35] *Secy. of State vs. Sudarsan Chatterji* A. O. D. No. 370 of 1933, decided by the Calcutta High Court on 23rd March 1936 (unreported). In this case the claimant satisfied the Court that, inspite of his best efforts, he could not revive his business elsewhere,—it was a business in lime for which situation was important—damage was awarded at 3 years' purchase on the following grounds and calculations :—(1) that the business had been existing in the premises for a long series of years, (2) that the claimant had made every endeavour to find out another suitable place but was unsuccessful, and (3) that he held under a lease of which 6 years had still to run. During 3 years immediately before the declaration there was a profit, but during the two years between the declaration and Collector's taking possession there was a loss. Half of this loss was attributed to the declaration, and the average of the 5 years was taken. Another view taken in this case was that the material time for determining the income which is to be compensated under clause fourthly, is the time preceeding the date of Collector's possession and the period between that date and the declaration could not be excluded, explaining *Collector of Dinajpore vs. Secy. of State* 25 Cal. 346.

[36] The essential is that loss by reason of such shifting of the place of business must appear : *Queen vs. Scard* 10 T. L. R. 545.

of that income would not necessarily be always sound. In fact it may be that a business may not for the time being be making any profit, but if it were left undisturbed at the place there is a reasonable prospect of its making an income. It will not obviously be right to say that the disturbance by the acquisition would not result in a loss for which the owner cannot claim compensation. In an English case [37], where a new business was being run at a loss, but the proprietors honestly anticipated a profitable return from it in the course of a few years, they were held to be entitled to compensation on the usual considerations, viz. extra rent, rates or other outgoings, the cost of adapting the new premises to their needs and probable diminution of profits due to less favourable situation.

Effect of term-leases.

132. Where the proprietor of a business or shop is not the owner of the land and the building on it, but occupies only as a tenant under a lease, the length of the unexpired period of the lease, would be a matter for consideration in assessing compensation for injurious affection or loss of earning. The question would be what was the probability of the business being continued at the place if the land were not acquired. It follows that where the occupation is precarious, as for instance where it is on a monthly lease (or no lease) terminable at any time by notice at the lessor's will, the compensation would be very small or even *nil*, whether as injurious affection, loss of earning or removal. The practice usually is to allow, nevertheless, two or three month's income to cover all these items. The process of eviction is always a matter of time, and one justification for this practice may be that if the lessor had sought to evict him, the tenant would have this time at least, but in compulsory acquisition he is required to vacate at once [38]. But whatever the strict legal position in this respect,

Tenants-at-will.

[37] *Metropolitan and Metropolitan District Rail Cos. vs. Burrow* (1884) quoted in Hudson on compensation, p. 1521, The Times 22nd Nov. 1884.

[38] Time allowed by the Collector to the tenant to vacate, would then seem to be a relevant matter: and if this was the only reason for the

the substance of the matter would still be—whether there was a likelihood of the tenant being so evicted, if there was no acquisition. Howsoever the custom of leases may be prevalant in the conditions in England [39], long leases for shops etc. are not the usual practice in India, particularly where the business is not a large one : and yet it is generally found that such proprietors of shops spend considerable money in fittings and even in adjusting the floors and walls for their requirements. They are not usually disturbed (and it is not the interest of the lessor to disturb them) so long as they pay the rent, though the rent is sometimes increased at intervals. It would thus seem to be hardly equitable to lay too much stress on the circumstance of a lease being only a monthly lease : but all circumstances including the period for which the business has actually been carried on at the place though on such precarious occupation, and the probabilities judged from the local conditions and partice, ought to be taken into account.

Loss for credit sales.

133. *Loss on account of credit sales* :—So far as this represents loss that arises from loss of customers in the locality with whom a mutual understanding had been established, it would be covered by the loss of goodwill and earning. But in sweeping acquisi-

compensation, where two or three months' time is allowed, the compensation may very well be *nil*.

[39] Section 121 of the Lands Clauses Consolidation Act, 1845, provides for compensation for "any loss or injury" to a tenant-at-will having "no greater interest therein than a tenant for a year or from year to year". In England compensation for expulsion is determined on the same principle as damages for trespass : *Ricket vs. Metropolitan Rail Co.* (1865) 34 L. J. Q. B. 257 at p. 261. Subject to this Section 121, the view taken generally by the Courts in England is that where tenancies are determined by notice or by expiration of their terms the tenants have no right to compensation for loss of profits although they may have had a reasonable expectation of continuing in possession or of having their lease renewed and have expended money on such expectancy : *R. vs. Liverpool and Manchester Rail Co.* (1836), 4 Ad. & El. 650 and other cases cited in Halsbury, 2nd. Ed. Vol. 6, art. 36. But as explained also there such claims have been allowed under the particular terms of a special Act : and it

tions, particularly of large *bustis*, the dispersion of the local people may entail considerable risk and difficulty in the realisation of outstanding dues : and this may, in circumstances, have to be taken into consideration.

Sub-section (1)—Clause fifthly.

Costs of removal.

134. The expenses referred to in this clause are generally called "costs of removal". The owner of the land who is awarded its market-value under clause *first*, is also entitled to be re-imbursed with these expenses[1]. As for other classes of claimants (e. g. a tenant), the same general principles as explained under clause *fourthly*, apply, when the question is whether they are or are not entitled to costs of removal.

Nature of the articles and distance.

135. The expenses of removal would depend on the nature of the articles to be removed, and the distance of the place where they would be removed. They will be heavier in case of loose grains which may require to be put into bags, and articles as glass-ware which may require careful packing. As for the distance, the Collector can only estimate on probability : but in case of objection the position is more definitely known by the time the Court takes up the reference. In English cases expenses of removal are mixed up with loss of earning etc. but the Indian Act makes it separate. A person removing to a short distance on the same street may not be entitled to any compensation on the ground of loss of earning[2], but he is entitled to his expenses of removal under this clause.

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is also that, in England, a tenant may have a right as against the landlord to compensation for improvements or for good-will under the Landlord and Tenant Act of 1927 (17 & 18 Geo. 5, c. 36). There is no corresponding protection for the tenant under any Indian Act.

[1] This follows the principle of English law laid down so far back as *Morgan vs. Metropolitan Rail Co.* (1868) L. R. 4 C. P. 97 Ex. Ch. In *Metropolitan and Metropolitan District Rail Cos. vs. Burrow*, (1884), The Times 22nd Nov. 1884, it is explained that expense of removal is a direct consequence of the owner's land being taken.

[2] *Queen vs. Scard*, (1894) 10 T. L. R. 545. (a case of a solicitor).

136. Expenses incidental to such change would include special expenses as for removal of a family deity. In a case before the Calcutta Improvement Tribunal, the Court analysed the essential ceremonies for the removal of a Hindu deity as consisting of *bastujaga* and *avyudwoika*. Where the place itself is dedicated to the deity, a further ceremony of *math-pratisthan* is necessary. Engagement of *kirtan* party and musicians, and feeding of relatives, were not regarded as items for which compensation could be claimed[3].

Removal of deity.

137. One essential requirement of a claim for removal, is that the change of residence or place of business must be "in consequence of the acquisition". So, in a case in which the term of the lease had expired but the tenant (who had a business on the land) was holding over while the landlord had given him notice to quit and then instituted a suit for ejectment, and the claimant did vacate while the land acquisition proceedings were going on, it was held that he was not entitled to any compensation for changing his place of business, as this change was not in consequence of the acquisition of the land[4].

Change of place must be in consequence of the acquisition.

Tenants-at-will

As regards tenants-at-will generally, see paragraph 132 *ante* under clause *fourthly*.

138. Question sometimes arises whether expense for removal of articles in land which is not being acquired, can be claimed when such removal becomes necessary by reason of vacating the business from the land acquired. This happens where the main shop is acquired but not the godown and the like. The expenses of such removal, when it is clear that they are incidental to the change of place for the shop, would seem to be compensateable under this clause, just as any increased cost of running, if the godown was not shifted, is

Whether expenses of removing articles from other premises can be claimed.

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[3] Case No. 62 of 1928, Pr. No. 30 Belgachia Road.

[4] *Secy. of State vs. Breakwell & Co.* A. I. R. 1928 Cal. 761, 32 C. W. N. 556.

compensateable whether treated under clause *thirdly* or *fourthly* [5].

Sub-section (1)—Clause sixthly.

Diminution of profits between declaration and possession.

139. This clause [6] refers to cases where there is a diminution of the profits of the land acquired, during the period between the date of the publication of the declaration under section 6 and the date of the Collector's taking possession of the land. Where the profits derived are by letting out the land or the buildings thereon, an impending acquisition may result in difficulties in getting any but casual tenants, or it may be the cause of the premises or parts remaining altogether unlet [7].

General principle discussed.

That the owner should be reimbursed of such loss follows from the same general grounds for which compensation is payable for the loss of business and goodwill, and the principles of damages as in an action for trespass apply [8]. This covers also cases where loss is incurred until other suitable premises are obtained [9].

Diminution must be due to the acquisition proceedings.

140. The damage must result *bona fide* from the diminution of profits, and from the principle underlying as stated in the last paragraph, this diminution of profits must appear to be due to the announcement of the intended acquisition [10]. The clause, however, does not contemplate compensation for any

[5] See paragraph 115-16 *ante* under clause *thirdly*.

[6] This clause was introduced in the Act of 1894 along with clause secondly : see footnote 1 under that clause.

[7] *Johnstone vs. Secy. of State* (1917) 42 I. C. 905, 60 P. R. 1917, where there was a falling off of tenants.

[8] *Ricket vs. Metropolitan Rail Co.* (1865) 34 L. J. Q. B. 257 per Erle C. J.

[9] *Jubb vs. Hull Dock Co.* (1846) 9 Q. B. 443.

[10] *R. vs. Vaughan* (1864) L. R. 4 Q. B. 190, where the loss of profits was caused by the destruction of neighbouring houses in connection with the undertaking, during the interval between the notice and actual taking of possession,—it was held as not a subject of compensation. So, *Re Kilworth Rifle Range* (1899) I. R. 2 Q.B. 805, arrears of rent, the recovery of which was rendered impossible by reason of the acquisition, held as too remote.

diminution of profits prior to the declaration under section 6, although the likelihood of the land being acquired would be known to the public at the earlier stage of notification under section 4 (1). It will be noticed that while the amendment of 1923 changed the material time for market-value in clause *first*, to the earlier date of the notification under section 4(1), the date in clause sixthly, viz. the date of declaration, was not altered. The reason obviously is that the final decision about acquisition is not reached till the declaration under section 6.

Diminution prior to declaration not to be taken into account.

Where part only of a property was first declared for acquisition, but later the whole had to be acquired as the claimant insisted under section 49(1) that the whole should be acquired, it was held that the damages under this clause could only be computed from the date of the later declaration for the acuqisition of the whole [11].

Where there are several declarations for parts of a premises.

141. Proviso (i) of section 475 of the Calcutta Municipal Act of 1923, permits compensation for damage suffered after declaration, only when the Collector does not make his award within two years from the date of declaration. Same also in the Calcutta Improvement Act of 1911 (Schedule, clause 13) and the United Provinces Town Improvement Act 1919 (Schedule, clause 14). It would seem thus that in acquisitions to which these Acts apply, no claim can be made under clause *sixthly* if the Collector has made his award within two years. The modification of the Land Acquisition Act, made by the last two Acts, places this provision after section 48, as a new section 48 A. But the language does not limit its application to case of withdrawal only, while the expression "damage suffered" is comprehensive.

Exception in certain local Acts.

[11] In *re Govt. and Doyal Mulji* (1906) 9 Bom. L. R. 99. It may however be observed, that if the profits from the portion first declared had fallen in consequence of the declaration issued about it, there is no reason why the period between that declaration and the later declaration for the remaining part, should be excluded from the computation of the loss in the first part.

142. If by reason of clause *seventhly* of section 24 *post*, or by reason of provisions in special Acts, which forbid buildings on sanctioned road-alignments, the owner of the land is prevented from effecting improvements which might fetch a higher profit, question may arise whether the loss would be a diminution of profits within the meaning of clause *sixthly*. In the case of *Elias vs. Secy of State* 32 C.W.N. 860 compensatian was claimed for being obliged to keep the land vacant, that is to say for not being able to derive a profit which the owner could otherwise derive : it was held that the legislature has not provided for any compensation on that ground.

When loss of profits arises from disability to improve or build.

Sub-section (2)—Additional compensation of fifteen per cent.

143. The provision in this sub-section corresponds to section 43 of the old Act of 1870, and the object as stated by the Select Committee for the Act was that "fifteen per cent on the market-value shall be given in consideration of the compulsory nature of the acquisition." In England, although there is no express provision in the Lands Clauses Acts, it is the established practice to allow 10 per cent, and this allowance is added to the value of land. "The exact purpose of the allowance is a little uncertain, but the correct view probably is that it was adopted in practice as a convenient means of providing for the cost of re-investment and other incidental expenses which the owner might incur in connection with the taking of his land" [1]. Curtis writes [2]—"This allowance is intended as a bonus and to cover the loss arising from the necessity of re-investing the money". Apart from considering it as a *solatium* for the compulsion (see section 24 secondly),

Reasons for 15 per cent allowance.

[1] "The Compulsory Purchase Acts" by Adkin and Lawrence, at page 56.

[2] "Valuation of Land and Houses" by Curtis, 6th Ed. at page 200.

and as the cost for re-investing the money, it cannot be gainsaid that the parties are forced to certain expenses for lawyers, experts etc. in the course of the land acquisition proceedings.

The allowance not on damages.

144. The sub-section applies only to the market-value which may be awarded under clause first of sub-section (*1*). The fifteen per cent additional compensation cannot therefore be claimed on the damages or expenses awarded under clauses secondly to sixthly [3]. The question in every case would be whether the amount on which the percentage would be applied, is the market-value of the land or only a damage. In a case in which the owner had entered into an agreement to sell his land to another person at an amount less than the amount awarded by the Collector, but failed to complete the sale, it was held that the purchaser was entitled to the difference between the price paid by Government and the contract price but not the statutory allowance of 15 per cent paid by Government [4].

When Government is the owner of the land, it is entitled to this 15 per cent additional compensation [5]. The value of trees existing on the land at the date of the notification under section 4(*1*), would be included in the market-value under clause first, and the additional compensation must be allowed on it [6]. Similarly value of wells would be included in the market-value of the land and the additional compensation would have to be paid on it [7].

[3] *Maharaja Sir Rameswar Singh vs. Secy. of State*, 12 C. L. J. 56, 6 I. C. 848 : also *Government of Bombay vs. Eusuf Ali Salebhai* 34 Bom. 618, 5 I. C. 621.

[4] *Nobin Chandra Shah Pramanik vs. Krishna Baroni Dassi* (1911) 15 C. W. N. 420.

[5] *Manimohan Dutt vs. Collector of Chittagong* (1913) 40 Cal. 64.

[6] *Sub-Collector of Godavari vs. Seragam Subbaroyadu*, 30 Mad. 151 : *Krishnabhai vs. Secy. of State*, 42 All. 555, 57 I. C. 520.

[7] *Collector of Bareilly vs. Sultan Ahmed Khan* A. I. R. 1926 All. 689, 95 I. C. 150, 48 All. 498.

The provision mandatory.

145. The provision for additional compensation in this sub-section is mandatory[8], and the compensation must be awarded even though the party has not made a claim for it specifically[9].

Where section 23 (2) not applicable.

146. The rule of additional compensation of 15 per cent as laid down in this sub-section does not apply to acquisitions under the City of Bombay Improvement Trust (Transfer) Act, 1925. In its place a sliding scale is laid down in the Schedule of that Act, according to the amounts of the compensation awarded,

Bombay.

the maximum being 6 per cent. It is a substantial reduction of the percentago otherwise allowable under sub-section (2), but it provides for this additional compensation for cases of damages as well.

United Provinces.

The United Provinces Town Improvement Act of 1919 maintains the 15 per cent additional compensation for cases under clause first of section 23(1), and provides for payment of costs by the Collector to persons not entitled to the above percentage [i. e. persons who receive damages only under the other clauses of sec. 23(1)] on account of expenses "actually and reasonably incurred by such person in preparing his claim and putting his case before the Collector", provided the Collector may disallow wholly or in part, costs incurred by a person making an extravagant claim (article 3 of the Schedule). The award of costs may be objected to by reference under section 18.

Burma.

Tho Burma Act V of 1920 follows literally the provisions of the United Provinces Town Improvement Act.

Calcutta before 1922.

The original provisions (article 2 of the Schedule) of the Calcutta Improvement Act of 1911, had also the same provisions as now appear in the United Provinces and Burma Acts, but by the

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[8] *Mahomed Ismail vs. Secy. of State*, A. I. R. 1936 Lah. 599 : *Secy. of State, vs. Shanmugharaya Mudaliar*, 16 Mad. 369, 20 I. A. 80.

[9] *Md. Sajjad Ali Khan vs. Secy. of State*, A. I. R. 1938 All. 742.

amendment in 1922 (Bengal Act I of 1922), these were deleted. The result is that sub-section (2) as in the main Act now applies.

24. But the Court shall not take into consideration—

Matters to be neglected in determining compensation.

first, the degree of urgency which has led to the acquisition ;

secondly, any disinclination of the person interested to part with the land acquired ;

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit ;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put ;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired ;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put ; or

seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the [notification under section 4, sub-section (*1*)] [1]

[1] These words and figures within brackets were substituted for the words and figures "declaration under section 6" by s. 8 of the Land Acquisition (Amendment) Act, 1923 (38 of 1923).

Just as section 23 (*1*) *ante* enumerates the main items which must be taken into account in determining the amounts of compensation, section 24 enumerates certain matters which must not be taken into consideration. This enumeration is not, of course, as it cannot be, exhaustive.

Clauses first and secondly.

Urgency of the acquisition or unwillingness of the owner--no ground.

1. The statutory allowance of 15 per cent under section 23 (2) is avowedly meant to cover all these considerations as well as the expenses and trouble of the party in the proceedings [see notes under section 23 (2) *ante*].

That the land is required for some urgent and immediate necessity [2], or that the owner is not willing to part with his land [3], or that his objection or unwillingness is on social or religious grounds [4], are no grounds for any increased compensation. "The disinclination of the vendor to part with his land and the urgent necessity of the purchaser (the acquiring body) to buy must alike be disregarded"[5].

Clause thirdly.

Damages which are not otherwise actionable.

2. Clause thirdly, rules out of consideration such damage which if caused by a private person, would not render such person liable to an action for damage. The right to damage being established, the amount is determined by the ordinary rules applicable to damages in actions of tort [6]. Rules regarding damages for loss of earning, removal, severance, and injurious affection, are subject to this ordinary test, viz. the test of *ex-*

[2] *Secy. of State vs. Basawa Singh*, 17 I. C. 764, 19 P. W. R. 1918.

[3] *Ezra vs. Secy. of State*, 30 Cal. 36 7 C. W. N. 249 and the Privy Council judgment 32 I. A. 93, 32 Cal. 605, 9 C. W. N. 454.

[4] *Collector of Poona vs. Kashinath* (1886) 10 Bom. 585.

[5] *R. V. Narayana Gajapatiraju vs. Rev. Divisional Officer, Vizagapatam* (1938) 43 C. W. N. 557 (at p. 564).

[6] *Re : London, Tilbury and Southend Rail Co. etc.* (1889) 24 Q. B. D. 326 C. A.

damno sine injuria non oritur actio and not merely *damnum absque injuria.* What a private owner can do on his own land with impunity, there is no reason why an acquiring body using the land for public benefit should not be entitled to do the same without any liability[7]. On this principle claim for loss to a neighbouring ferry owing to the construction of a Railway Bridge on *other* land, was disallowed[8]. So, a claim for loss to a neighbouring market owing to the opening of another market on the land acquired was also similarly disallowed[9].

Clause fourthly.

Decrease in value to land acquired —by user after acquisition.

3. Clause fourthly rules out consideration of any damage or diminution of value which may be caused to the land acquired by the use to which it would be put after acquisition. The object, as stated in the Second Report of the Select Committee, is to "exclude from compensation only a possible depreciation of the acquired land itself from the use to which it will be put; that is to say, if garden-lands are appropriated for a latrine, the owner will get compensation for garden-lands without reference to the lower values they will subsequently have". This follows from the general principle that it is the value to the owner which has to be compensated for and not

[7] This is forcefully put in *Metropolitan Board of Works vs. McCarthy* (1874) L. R. 7 H. L. 243 thus :—"There are many things which a man may do on his own land with impunity, though they seriously affect the comfort, convenience and pecuniary value, which attach to the lands of his neighbour. * * * * why then, it may surely be asked, should any of these things become the subject of legal claim and compensation, because, instead of being done as they usefully might, by the original owner of the neighbouring land, they are done by third persons who for the public benefit have been compulsorily substituted for the original owners ?" See also notes under clause fourthly of section 23(1).

[8] *Maharaja Sir Rameswar Singh vs. Secy. of State* (1907) 34 Cal. 470, 11 C. W. N. 356 : See also, *Collector of Dinajpur vs. Girija Nath Roy*, 25 Cal. 346.

[9] *Secy. of State vs. Mahammed Ismail* (1926) 49 All. 353, A. I. R. 1927 All. 246, 100 I. C. 749.

the value to the purchaser or the acquiring body ; and in the above illustration the value of the land to the owner is its value as garden-land and not its value as latrine land.

The value to the owner is the market-value as at the time of the acquisition, to be precise, the date of the notification[10] under section 4(*1*)—that is to say market-value of the land as garden-land as it was then, with all its potentialities for higher value. It follows also that when the owner has been so compensated no question of further compensation on account of any depreciation which may be caused to the value of the land acquired by its use by the acquiring body, can be claimed by him : his interests in the land cease from the date the Collector takes possession.

From this latter point of view, the expression—"after the date of the publication of the declaration under section 6" would seem to be purposeless : and in fact it is not repeated in the next clause fifthly. The damage contemplated is such as is likely to arise "by or in consequence of the use to which it will be put" ; and such damage to the land, for example depreciation by use as a latrine in the above illustration, cannot arise till after the declaration or rather till later, viz. after possession has been taken by the Collector. As for damage caused by diminution of profits during the period between the declaration and the taking of possession, it has to be compensated for under clause sixthly of section 23(*1*) *ante*.

4. But this does not rule out damage which may be caused to any land *other than the land acquired*. The words used in the clause are—"damage.........to the land acquired", and there is no provision forbidding consideration of such damage corresponding to clause sixthly. Such damage may arise either by reason of the user for the declared purpose of the acquisition, or it may be for other kind of user which would be a nuisance. In the former case compensation may have to be paid for damage to

[10] From this view the words—"declaration under section 6" should have been changed to "notification under section 4(1)" when clause first of section 23 was amended in 1923. The omission was probably an over-sight.

other lands, under clause thirdly or fourthly of section 23(*1*) (see notes under those clauses *ante*) : and in the latter case it would be a cause of ordinary action when the occasion actually arises.

Clause fithly.

5. Just as clause *fourthly* excludes from consideration any decrease in value owing to the anticipated use of the land after acquisition, so clause *fifthly* excludes from consideration any increase in the value of the land acquired by such use. This is put thus in *Wernicke vs. Secy. of State*[11] :—"the purpose for which the land is taken should not be taken into consideration, for if it were so done, the result virtually would be that the public will be purchasing as it were its own improvements". In *Manmatha Nath Mitter vs. Secy. of State*[12], though it was a case of possession and conversion to other use by the acquiring body, before completion of award, their Lordships of the Privy Council observed that if subsequent changes in the condition of the land were taken into account, "it would lead to strange and capricious results". The recognised principle as explained in Cripp's Law of Compensation (page 104) is that in the assessment of compensation any enhancement or diminution in value consequent on the construction of works authorised by the Act under which the assessment is made, must be excluded. It follows from the general rule in English law [repeated in clause first of section 23(*1*) *ante*] that the date of the notice to treat fixes the time at which the condition and value of the premises are to be estimated[13].

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11 (1909) 2 I. C. 562, 13 C. W. N. 1046.

12 (1898) 25 Cal. 194, 1 C. W. N. 693.

13 *Dawson vs. Great Northern and City Rail Co.* (1905) 1 K. B. 260, 92 L. T. 137. Matters which increase or decrease the value of the land after the date of the notice are immaterial : *Bwlfa and Merthyr Dare Steam Collieries Ltd. vs. Pontypridd Water Works Co* (1903) A. C. 426, per Lord Halsbury. Also the observation in the early case ot *Penny vs. Penny* (1867) L. R. 5 Eq. 227, 37 L. J. Ch. 340 that "every man's interest shall be valued *rebus sic stanibus*, just as it occurs at the moment when the notice to treat was given."

6. The clause, however, does not expressly state that the use which increases the value must be such as is open *only* to to acquiring body [14]. This has, however, not been interpreted in any case as ruling out the ordinary principles of "potential value", or value due to "special adaptibility" or "disposition in the most lucrative manner", which the owner himself was lawfully competent to avail of.

The question has been very fully discussed by Lord Romer in the recent Privy Council case of *V. Narayana vs. Revenue Divisional Officer, Vizagapatam* [15], reviewing all the important previous decisions of the Board. It has been held in the case that where the owner is a person who could turn the potentiality [16] of the land into account, it is immaterial that the utilization of the same potentiality is also the purpose for which the land is acquired [17]. Where there are other purchasers in the market who would pay for the value of this potentiality [18], the case is simple, but the position is not altered even if the acquiring body was the only possible purchaser in the market who could utilise that potentiality. The question would be what that body would have paid as a willing purchaser not under compulsory acquisition : and it

[14] Compare section 2(3) of the English Acquisition of Land Etc. Act of 1919, quoted at page 209 *ante*, which restricts the user to the purpose to which the land could be applied *only* in pursuance of statutory powers, *i.e.* the declared purpose of the acquisition, thus permitting application of the rules of potential value as regards more lucrative user of the land which it is open to the owner also to adopt. See notes under Potential Value pages *ante*.

[15] *V. Narayana Gajapatiraju vs. Revenue Divisional Officer, Vizagapatam* (1938) 43 C. W. N. 557.

[16] In this case the land was a natural reservoir of spring water, with this potentiality that it was the only source of water-supply to a harbour and the surrounding industrial concerns.

[17] The following observation by Vaughan Williams L. J. in *Re. Lucas and Chesterfield Gas and Water Board* (1909) 1 K. B 16, was cited with approval :—"the fact that no buyer for reservoir purpose can be found except a buyer who has obtained parliamentary powers does not prevent the special value being marketable."

[18] Such purchasers are described as "potentiality buyers" as opposed to "poramboke buyers" or ordinary purchasers who would not pay on the prospect of exploiting the potentiality.

was not correct to determine the amount—"on the footing that the spring (which constituted the potentiality in the case) could have been made an income-earning concern on the 13th February 1928", the material date for the market-value, but "the fact that the water could not be exploited by the appellant himself and that it would necessarily be some years before the water would become a profit-earning asset in their hands, the Harbour Authority, however willing purchasers they might be, would not have agreed to pay anything like that sum", has to be duly taken into consideration [19]. The meaning of clause fifthly as applied to the facts of the case, was held to be—"no more than this : that in valuing the appellant's land on the 13th February 1928, it must be valued as it then stood, and not as it would stand when the land had been acquired and the water on it used for ridding the harbour area of malaria. The Harbour Authority would otherwise be made to pay twice over. But the sub-section (meaning clause fifthly) does not mean that the possibility that a particular purchaser of land would give higher price for it by reason of its possessing a special adaptibility must be disregarded merely because the land will be more valuable in his hand when he exploits than it would be if left in the hands of the vendor who was unable to exploit it".

The important aspect of the case was that although no person other than the Harbour Authority was in a position to exploit the potentiality, it was within the competency of the claimant to exploit it and derive a benefit. "It is plain" their Lordships observed—"that neither the appellant nor any purchaser from him would encounter any engineering difficulties in conducting the water from the spring to the southern boundary of the harbour area : nor would they encounter any engineering difficulty in conducting the water from that boundary to the premises of the oil companies and other concerns". The consent

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[19] On the date of the acquisition, the potentiality was not a "realised potentiality," but only such as could in time be realised. In the circumstances of the case, the valuation of Rs. 1,05,000/- on the footing of "realised potentiality" was reduced to Rs. 40,000/-.

of the Harbour Authority would be necessary, but that was not a serious matter, because "there was no other source from which the water could be supplied by the Harbour Authority itself".

Clause sixthly.

Increase in value to other land by the user of the land acquired.

7. While clause fifthly refers to increase in the value of the *land acquired*, this clause refers to similar increase in the value of *other lands* of the person interested by reason of the use to which the land acquired would be put after acquisition. This question of increase in the value of other lands, would seem to arise only when the owner of such other lands claims compensation to which he is entitled for his acquired land and it is sought by the acquiring body to set off this increased value against his claim. The leading English case on the point is *Eagle vs. Charing Cross Rail Co.* [20] in which it was held that such increased value could not be set off against the damage (for severance or for injurious affection) to which the claimant was entitled.

Exceptions—(i) Bombay City.

8. The City of Bombay Improvement (Transfer) Act, 1925, however, makes an exception to this general rule. Section 64(*1*) of this Act lays down as below :—"The Court shall take into consideration any increase to the value of any other land or building belonging to the person interested likely to accrue from the acquisition of the land or from the acquisition, alteration or demolition of the building".

—(ii) Calcutta.

9. Similar departures from the principle of the clause are made in provisions for realisation of "exemption fee" and "betterment fee" in certain Town Improvement Acts. See section 78 of the Calcutta Improvement Act, 1911, and provisions in the Calcutta Improvement Amendment Act (Bengal Act VII of 1931).

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[20] (1867) L. R. 2 C. P. 638.

Clause seventhly.

Outley etc. after notification.

10. This clause corresponds to section 25(7) of the earlier Act X of 1870. The words "notification under section 4, sub-section (1)" were substituted by the amending Act 38 of 1923, in place of the words "declaration under section 6" in the original Act of 1894. This extends the period of disability to an anterior date : but it is necessitated by the provisions of section 5A introduced by the same Amending Act, and the consequent amendment of clause first of section 23(*1*). The material time for the market-value of the land is thus the date of the notification under section 4(*1*), and this clause rules out consideration of any outlay, improvements or disposal of the land acquired, made subsequent to that date. The exception is when these are done with the sanction of the Collector. This is consonant with the general principle recognised in English law that a landowner who has received a notice to treat cannot deal with the land so as to increase the burden of the promoters as regards the amount of compensation [21].

Outlay or improvements

11. *Outlay or improvements* : In a case[22] prior to this amendment of 1923, it was held that if the owner invested capital on the land to be acquired, after the declaration under section 6, he did so at his own risk. The time is now the notification under section 4(*1*). The clause refers to outlay or improvements on *the land acquired,* and the basic idea is that any increase in value for the acts of the owner done after the date of the notification is not to be taken into consideration.

[21] *Mercer vs. Liverpool, St. Helen's and South Lancashire Rail Co.* (1904) A. C. 461, *per* Lord Lindsay, 1 K. B. 652. See also *Cardiff Corporation vs. Cook* (1923) 3 Ch. 115.

[22] *Secy. of State vs. Quamar Ali,* 51 I. C. 501, 16 A. L. J. 669.

12. *Disposal of the land* : This apparently includes sales, mortgages, leases etc. The general principle in English law is that interests created after the service of notice to treat, are not subject of compensation [23], but this is modified by the further view that a person having an interest in the land may part with it after such notice, and the assignee or grantee then stands in his place as regards the right to compensation [24]. This follows from the qualification put in *Mercer's* case (ibid), viz.—"so as to increase the burdens of the promoters". Although there is no such qualifying expression in clause seventhly, the position would seem to be the same, viz. that such disposal of the land would not be applied so as to increase the value of the land. Transactions after the notification when they affect the title of any person to receive the amount of compensation or any portion of it, must be taken into account for the apportionment of the amount. In a case before the Calcutta High Court, Mukherji J, observed [25] that sections 23 and 24 "only lay down rules for determining the market-value and do not create any right on the part of the owners of the lands or the holders of interests therein to obtain compensation on the footing of their respective rights as at the date of declaration". So, if there has been a sale, mortgage or lease after the date of notifiication and before award, the right of the purchaser, mortgagee or lessee to receive the whole or portion of the compensation, *vis-a-vis* the owner at the time of the notification, is not affected

Disposal of land.

The clause does not affect title.

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[23] *Johnstone vs. Edgwara, Highgate and London Rail Co.* (1866) 35 Beav. 480 : *Zick vs. London United Tramways, Ltd.* (1908) 2 K. B. 126, C. A.

[24] *Cardiff Corporation vs. Cook* (1923) 2 Ch. 115. But in the earlier case *Re Marylbone (Stingo Lane) Improvement Act, Ex parte Edwards* (1871), L. R. 12 Eq. 389, it was held that where a weekly tenant was given an agreement for a lease for three years after service of the notice to treat, the tenant was not entitled to compensation created by the agreement.

[25] *Nrishinha Charan Nandi Chaudhury vs. Nagendra Bala Deby* (1932), A. I. R. 1933 Cal. 522, 60 Cal. 581, 37 C. W. N. 14 (at p. 15).

by this clause. In an earlier case[26] of 1905, in which the owner at the date of the declaration had after that date executed to the claimant an indenture conveying all interests, the objection that the latter had no *locus standi* was overruled and it was held that he was, as a person interested, entitled to dispute the valuation by reference.

Same principle in certain local Acts.

13. The Calcutta Improvement Act 1911 (Schedule, clause 11), the United Provinces Town Improvement Act (Schedule, clause 12) and the Burma Act V of 1920 (Schedule, clause 11) lay down[27] that when any interest in any land acquired under those Acts has been acquired after the date of the publication of the declaration under section 6,[28] no separate estimate of the value of such interest shall be made *so as to increase* the amount of compensation to be paid for such land.

14. In acquisitions for the Calcutta Improvement Trust, clause seventhly has to be read as below :—

Expenses for repairs, under certain local Acts.

"Any outlay on additions or improvements to land acquired, which was incurred after the date of the publication of the declaration under section 6, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair" (Clause 10 of the Schedule to the Calcutta Improvement Act, 1911).

Same provision is made in the United Provinces Town Improvement Act, 1919 (Clause 11 of Schedule). Similar provision is made also in section 64(2) of the City of Bombay Improvement (Transfer) Act, 1925, but the date, instead of being

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[26] *J. C. Galstaun vs. Secy. of State*, (1905) 10 C. W. N. 195. In this case there was a contract for sale prior to the date of the declaration, but it was contended that under section 54 of the Transfer of Property Act this did not by itself create any interest in the property at the date of the declaration.

[27] This is put as part of a new section 24A, for the purposes of those Acts. Same provision is made in section 64 (2) (latter part) on the City of Bombay Improvement Trust (Transfer) Act of 1925.

[28] The date of declaration continues to be the material date for the market-value in all these local Acts.

the date of the declaration, is put back to the date of notification by the Trust Committee under sections 33 or 44 or 53 of the Act.

Where, therefore, these special Acts apply, any outlay after the declaration for which compensation may be claimed must be such as was required for maintaining the house in a proper state of repair, and no sanction of the Collector is necessary.

Rules as to amount of compensation.

25. (*1*) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11.

(*2*) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(*3*) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

Scope and object of section.

This section lays down the minimum and the maximum within which the Court must limit its award[29], when the amount awarded by the Collector is contested in a reference under section 18. The principle is that where the party has claimed a certain sum before the Collector he cannot claim a larger sum in his reference to the Court: similarly, when the

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[29] *Secy. of State vs. Subramania Ayer*, A. I. R. 1930 Mad. 576, 127 I. C. 298.

Collector has awarded a certain sum, that sum cannot be reduced by the Court. Sub-sections (2) and (3) next deal with cases where the party has refused or omitted to make a claim to the Collector in pursuance of notice under section 9. He cannot claim a higher amount than what has been awarded by the Collector, unless he can satisfy the Court that there was "sufficient reason" for his omission, in which case the minimum is not to fall below the amout of the Collector's award, but no maximum has to be observed [30].

Collector's award cannot be reduced by the Court.

2 In no circumstance, whether the party made a claim before the Collector or refused or omitted to make such a claim, can the Court reduce the amount awarded by the Collector [31]. This broad rule also follows from section 12(*1*) which makes the Collector's award final and conclusive as between him and the party. As for the party, this is subject to his right to object by applying for a reference under section 18 ; but for the Government or the acquiring body, no such reference lies as it is not a "person interested" : see section 3(*b*) *ante* and the proviso to section 50(*2*) *post*. The amount awarded by the Collector thus becomes the minimum so far as regards the Government or the acquiring body such as a Company or a local authority [32]. It has also been held that it is not open to Government to obtain

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[30] See the case of *Subramaniya Ayer*, ibid. But the ordinary rules of pleading will apply to the amount claimed by the party in his reference to the Court. See the case of *Prasanna Kumar Dutt vs. Secy. of State*, A.I.R. 1934 Cal. 525, 151 I. C. 160, 61 Cal. 245, 38 C. W. N. 239, where a claim of Rs. 6,825/- in the reference application was sought to be raised to Rs. 25,000/- by a further claim. It was however a case in which the party had made a claim also to the Collector.

[31] There may seem to be a lacuna with regard to cases where the party has *refused* to make a claim : but as from the general plan of the Act it is not open to the Collector or the acquiring body (Company or local authority) to obtain a reduction, the position remains the same.

[32] There is also the circumstance that the Collector is an "agent" of the Government [see notes under section 3 (c) *ante*], and as such his act binds Government.

a revision of the Collector's award under section 115 of the Civil Procedure Code with a view to obtaining a reduction on the ground that it is wrong [33]. Section 25 makes it further clear that it is not open to the Government or the acquiring authority to obtain a reduction of the Collector's award [34], even when the matter is before the Court on a reference made by the party. It has, however, been held that the words "amount awarded" mean the total amount awarded to the applicant by the Collector, and when there is no reduction in this total amount the Court may reduce and vary the several items composing the award [35].

Sub-section (1).

Meaning of applicant.

3. The word "applicant" is used to describe the person who puts in a written application under section 18. He is not necessarily indentical with the person who makes a claim after notice under section 18 : and his legal representatives will also be bound [36]. But where a Hindu widow claimed compensation at a certain rate

[33] *British India Steam Navigation Company vs. Secy. of State* (1910) 38 Cal. 230, 8 I. C. 107, 15 C. W. N. 87.

[34] It is not open to Government to say that the Collector's award was wrong and it should be reduced : *Rangoon Botataung Co. vs. Collector of Rangoon* (1912) 40 Cal. 21, 16 I.C. 188, 29 I.A. 197, 16 C W.N. 961, 5 Bur. T.J. 16. See also the case of *Chandulal Shah vs. Collector of Bareilly* (1921) A.I.R. 1922 All. 203, 64 I. C. 624, 44 All. 86, in which the Collector made an award of Rs. 470/- which erroneously included a sum of Rs. 184/- being the value of trees which had been cut and removed by the owner with the Collector's permission, it was held that the Court could not reduce the Collector's award.

[35] *Bai Jadav vs. Collector of Broach* A.I.R. 1926 Bom. 372, 96 I.C. 316, in which the market-value of the land was decreased, and compensation was awarded for severance, the total not being less than the Collector's award : *Gangadhar Shastry vs. Dy. Collector of Madras* 14 I. C. 270, 22 M. L. J. 379, in which *contra* observations in the case of *British India Steam Navigation Company*, ibid (not under section 25) were disapproved. See also *Kathi Sarbhai vs. Divisional Officer, Calicut*, 70 I. C. 82 : *Johnstone vs. Secy. of State*, 42 I. C. 905, 60 P. R. 1917 : and also *Secy. of State vs. F. E. Dinshaw*, A. I. R. 1933 Sind 21 : *Secy. of State vs. Amir Mohammad Khan* A.I.R. 1935 Lah. 653 : and *Sujan Singh vs. Secy. of State*, A. I. R. 1936 Pesh. 217.

[36] *Gattineni Peda Gopayya vs. Dy. Collector of Tenali*, A. I. R. 1922 Mad. 100, 45 Mad. 421.

before the Collector, and surrendered the estates to the reversioners, the latter are not precluded from claiming a higher amount, because though a widow represents her husband's estate for certain purposes, the reversioners are not her legal representatives : nor are they bound by her acts on any principle of estoppel [37].

Does not include reversioners.

4. The applicant cannot claim a higher sum in his reference under section 18 than what he claimed before the Collector [38] : and it is not permissible to the Court to award a sum in excess of that claimed before the latter [39]. This may read harsh, for ascertainment of the value of landed properties or the amount of compensation for damages which one may claim in compulsory acquisition, is not always an easy matter, and it cannot be expected that the claimant should be able in every case to arrive at a precise figure within the time allowed by the notice under section 9. But there is no bar to a party amending or filing supplementary claims to the Collector at any time before the Collector has made his award. The Collector cannot reject them, and it is his duty to deal with claims made at any time before his award, and claims so made are proper [40]. A claim made *after* the Collector's award is not a claim for the purposes of this section [41] : nor a claim in which no amount is specified [42].

Party may make additional or supplementary claim before the Collector has made his award.

but not after.

[37] *Gattineni Peda Gopayya vs. Dy. Collector of Tenali*, 45 Mad. 421.

[38] *Prasanna Kumar Dutt vs. Secy. of State*, A. I. R. 1934 Cal. 525, 151 I. C. 160, 61 Cal. 245, 38 C. W. N. 289.

[39] But where the L. A. Judge had awarded a higher sum (Rs. 3445/-) than what was claimed before the Collector (Rs. 2200/-) and there was no appeal or cross-appeal on behalf of the Secy. of State, the higher sum was maintained as in the circumstances it "must necessarily stand" : *Prasanna Kumar Dutt vs. Secy. of State*, ibid.

[40] *Secy. of State vs. Sohan Lal* (1918) 60 P. R., 44 I. C. 883. See also *Gyanendra Nath Pal vs. Secy. of State* A. I. R. 1921 Cal. 234, 61 I. C. 582, 25 C. W. N. 71 : *L. A. Officer vs. Fakir Md.* A. I. R. 1933 Sind. 124, 143 I. C. 699, in which it has been held that a belated claim before the Collector is not bad, and that such claim cannot be ruled out for the purpose of section 25(1) and (2).

[41] *Secy. of State vs. Gobinda Lal Bysak* (1907) 12 C. W. N. 263 : *Secy. of State vs. Bishan* 33 All. 376, 9 I. C. 423.

[42] *Orient Bank vs. Secy. of State*, A. I. R. 1926 Lah. 401, 94 I. C. 245, 7 Lah. 416.

Sub-sections (2) and (3).

5. Sub-section (2) is the most stringent part of the whole section [43]. It debars a party from objecting to the amount of the Collector's award, if he has not made a claim before him. Courts have therefore been inclined to give considerable latitude to the party in the matter of the interpretation of "sufficient reason", and also to put a strict interpretation to the requirements of the notice under section 9, in pursuance of which the claim has to be filed.

Interpretations of sufficient reason.

6. It has thus been held that it is the personal notice under sub-section (3) of section 9, and not merely the general notice under sub-section (1), which is required, [44] before the disability provisions in section 25 can be invoked against a person interested. The notice also must allow 15 days as required by section 9 (2), otherwise the defect would constitute a "sufficient reason" for omission to file a claim [45]. Where the applicant was able to prove that he had received no notice under section 9, or that the notice was not in strict compliance with the terms of section 9, that was a "sufficient reason" for the purpose of sub-section (3) [46].

Non-service of notice in strict compliance with sec. 9.

There may also be other reasons which the Court may treat as sufficient in the circumstances of the particular case. Where the correspondence showed that the applicant was fighting out the question of re-measurement and was under the impression that the question

Other reasons.

[43] Velinkar in his "Law of Compulsory Land Acquisition and Compensation" observes that this provision "is intended for the protection of the acquiring body" and "to prevent owners lying by and then bringing up cooked up or exaggerated claims". Whether that is the real object or not, it is obviously desirable that all persons interested should come forward and lay their claims before the Collector as soon as they receive notice of the acquisition proceedings : see paragraphs 7-8 of the notes under section 9 *ante.*

[44] *Venkatarama Iyyer vs. Collector of Tanjore,* A. I. R. 1930 Mad. 886, 128 I. C. 147, 53 Mad. 921.

[45] *Tara Prosad vs. Secy. of State,* A. I. R. 1930 Cal. 471, 127 I. C. 666, 57 Cal. 837, 34 C. W. N. 828 : *Collector of Chingleput vs. Kadir Mahiuddin* A. I. R. 1926 Mad. 782, 95 I. C. 888.

[46] *Nitai vs. Secy. of State,* A. I. R. 1924 Pat. 608, 81 I. C. 676, 3 Pat. 804.

of valuation would be taken up only after the question of measurement was settled, but the Collector proceeded to make his award the next day without notice to the applicant, it was held that was a "sufficient reason" for the purpose of section 25 (3) [47]. In the case of *Secy. of State vs. Dinshaw*, [48] there was no proof that the Collector had called upon the applicant to specify the amount of his claim for injurious affection, it was held that was a "sufficient reason" for condoning the omission to make such claim.

In an early case of 1903, it was held that merely because no notice under section 9 was served on the claimant, while he was aware of the proceedings before the Collector, would not be a sufficient reason for his omitting to urge his claim [49]. But in view of the later decisions cited above, this would no longer be the correct view. Again in a case in 1904 [50], where all the persons interested appeared, though notices were not served on all the individuals, it was held that this did not give a "sufficient reason". The case was however one which involved the question of service of notice where there were several persons jointly interested [51].

Omission to specify amount, is no claim :—

7. Where "sufficient reasons" are not given (and the notices have been in order) the Court would not be justified to increase the Collector's award [52]. Where a claim statement has been filed by the applicant, but it does not specify the amount claimed, it is no claim ; but the party may be entitled to the benefit of sub-

[47] *Burn & Co. vs. Secy. of State*, A. I. R. 1923 Cal. 513, 76 I. C. 579.

[48] A. I. R. 1933 Sind 21. See also *Nabin Chandra vs. Dy. Commissioner Sylhet*, 1 C. W. N. 562, and *Secy. of State vs. Narayanaswami Chettiar* A.I.R. 1932 Mad. 55, 138 I. C. 426, 55 Mad. 391.

[49] *Gangaram Marwari vs. Secy. of State* (1903) 30 Cal. 576.

[50] *Kashi Prasad Singh vs. Secy. of State* (1904), A. O. D. No. 172 of 1901, Cal. High Court.

[51] For which see *Harihar Banerjee vs. Ramshashi Roy* (1918) 45 I. A. 222, 23 C. W. N. 77 ; and also section 45 and notes thereunder.

[52] *Narain Dutt vs. Superintendent of Dehra Dun* 26 I. C. 795, 58 All. 69. See also In re *Merwanji* 9 Bom. L. R. 1232 : *Ram Prasad vs. Collector of Aligarh* 40 I. C. 274 : *Secy. of State vs. Bishan Dutt*, 33 All. 376.

section (3), if he can give "sufficient reason" as for a case in which there has been an omission to make a claim [53]. Where the party did not specify the amount of claim in his claim statement, but put before the Collector the valuation made by his (party's) expert, it was held that this was "sufficient reason" and the award of the Collector could be enhanced by the Court [54].

In such a case if expert valuation adduced-it is sufficient reason.

8. An order reducing the Collector's award on an erroneous application of law, is appealable to the High Court [55] : and so would be an order refusing to treat any reason adduced as not sufficient. The Court, it follows, must state its reasons when it refuses to accept the reasons adduced by the party as sufficient [56].

Order in contravention of sec. 25 is appealable.

9. Section 25 does not apply to the proceedings when they are before the Collector, *vide* sec. 15 *ante* which mentions sections 23 and 24 and not section 25 ; and the strict rule of pleading in this section is not obviously intended to be enforced in the proceedings before the Collector which are not judicial proceedings. In fact, it is not necessary that claims should be made in writing, unless the Collector specifically notifies that it should be in writing [vide sec. 9 (*2*) *ante*]. There is no such disabling provision in the English Law, either in the Lands Clauses Consolidation Act of 1845 or in the Land Acquisition (Assessment) Act of 1919. In *Robertson vs. City of South London Railway Co.* [57], Channel J. observed that he—"could not find

Section 25 does not apply to the proceedings when before the Collector.

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[53] *Orient Bank vs. Secy. of State*, A. I. R. 1926 Lah. 401, 94 I. C. 245, 7 Lah. 416.

[54] *Secy. of State vs. F. E. Dinshaw* A. I. R. 1933 Sind. 21, 146 I. C. 1040.

[55] *Chandu Lal vs. Callector of Barielly* (1921) 44 All. 86.

[56] *Secy. of Sate vs. Gobinda Lall Bysak* (1907) 12 C. W. N. 268.

[57] (1904) 20 T. L. R. 895. In Indian conditions there are greater reasons for not enforcing such strict rule of pleading when the proceedings are with the Collector and before he has made his award.

anything in the statute which said that when a jury thought that a claimant was entitled to more than he had claimed in respect of a subject-matter to the notice of the company, they might not award him more than he had claimed."

Form of award.

26. (1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause *first* of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (*2*), and section 2, clause (*9*) respectively, of the Code of Civil Procedure, 1908.

Sub-section (2) was added by the Amendment Act XIX of 1921, along with the amendment of section 54.

Scope of the section.

Section 26 lays down what the Coutt's award shall contain. To compare this with the requirements of the Collector's award as laid down in section 11 :—

COLLECTOR'S AWARD.	COURT'S AWARD.
(i) Area of the land.	(a) Market-value of the land under section 23(1) first.
(ii) Compensation allowed for the land.	(b) Amounts awarded under each of the clauses secondly to sixthly of section 23(1).
(iii) Apportionment of the said compensation amongst persons interested.	

"Compensation allowed for the land" in the Collector's award, includes not only the market-value as under clause first of section 23(1), but also damages etc. under the other clauses viz. secondly to sixthly of that section. Items (a) and (b) above, of the Court's award, thus correspond to item (ii) of the Collector's award. The significant point of difference between the Collector's award and the Court's "award" is that the latter does not include "apportionment". An adjudication of the Court on a matter of "apportionment" is thus not an "award" within the meaning of section 26 [1] : it is a judgment to be followed by a decree according to the Civil Procedure Code. The adjudication in a matter of "valuation" would be recorded in the form of an award as laid down in section 26, and the word "award" is used in this limited sense.

Court's decision on apportionment—not award.

2. *Sub-section (1)* requires :—

(a) that the Court's award must be in writing and signed.

(b) that the amount awarded must be classified into :— (i) the market-value of the land as determined under section 23 (1) first : (ii) the damages under each [2] of the clauses of that section,

and (c) that the grounds of awarding each of the said amounts should be stated.

From the language of sub-section (1), it would seem as if no compensation can be awarded except under one or other of the clauses of section 23(1). But, as has been explained in the notes under that section, these clauses are not exhaustive, [3] and Courts have

Section 23(1) not exhaustive.

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[1] *Raghunath Das Harjivan Das vs. Dt. Supdt. of Police, Nasik*, 57 Bom. 314, 35 Bom. L. R. 276, 144 I. C. 710, A. I. R. 1933 Bom. 187 : *Mahalinna Kudumban vs. Theetharappa Mudaliar*, A. I. R. 1929 Mad. 228, 115 I. C. 315. See also *Rama Chandra Rao vs. Rama Chandra Rao*, 49 I. A. 129, 45 Mad. 320, 26 C. W. N. 713.

[2] This is not required under the English Acts. All that is required is that the Jury shall deliver their verdict separately for (1) the sum of money to be paid for the land, and (2) compensation for injury : sections 49 and 63 of the Lands Clauses Consolidation Act, 1845.

[3] See paragraphs 5 and 6 of the notes under section 23 (1) *ante*.

allowed compensation although the ground cannot be brought strictly under any of these clauses, e. g., anticipated damage for user in execution of the declared purpose of acquisition, or principle of re-instatement.

The sub-section requires that the grounds of awarding each of the amounts under the several heads, should be stated. This statement of grounds is the "judgment" passed against which an appeal always lies[4]. Omission to state the grounds vitiates the Court's award[5].

Position prior to the Amendment of 1921.

3. *Sub-Section (2)*—was inserted by the Amendment Act XIX of 1921 along with the amendment of section 54. Previous to this amendment, the view taken by the Courts was that an award under section 26 was not a decree, and as such no second appeal lay [6] to the Privy Council and further that the award could not be enforced against the Collector or any Civil Officer, by means of execution proceedings (e.g. when there was an enhancement). The leading case on the second point was the Full Bench decision in *Nilkant Ganesh Naik vs. Collector of Thana* (1897) 22 Bom. 802. It was a decision under the old Act X of 1870, but it was followed in subsequent cases [7] under Act I of 1894. No practical difficulty arose when the case was one of simple enhancement of the amount awarded by the Collector, for the Collector would always respect the Court's order unless set aside in appeal, and where the compensation money is payable by a Company or a local authority, he would take

[4] This follows rules 4 (2) and 5 of Order 20 of the Civil Procedure Code. See also *Gangadhara Sastri vs. Deputy Collector, Madras* (1912) 14 I. C. 270, 22 M. L. J. 379.

[5] *Joseph vs. The Salt Co.* (1892) 17 Mad. 371.

[6] *Rangoon Botatoung Co. Ltd. vs. The Collector of Rangoon* (1912), 16 C. W. N. 916, 39 I. A. 197 : also see notes under section 54 *post.*

[7] *Ladha Ebrahim & Co. vs. Asstt. Collector, Poona* (1911) 35 Bom. 146, 8 I. C. 166 : For contrary view prior to the amendment of 1921, see *Manavikraman vs. Collector of Nilgiris* (1918) 41 Mad. 943, 49 I. C. 27 : *Zamindars of Dhar vs. Rana* (1906) 58 P. R. 1906, 108 P. L. R. 1906,

action to see that the Court's order is complied with.[8] The position still could not be said to have been satisfactory, and the amendment of 1921 has removed[9] this unsatisfactory aspect. The amendment, however, would not seem to apply to cases of acquisition under local Acts passed prior to 1921 and in which the Land Acquisition Act of 1894 was inducted by specific provisions in those Acts.[10]

4. As for appeals against awards under section 26 see section 54 *post*.

Costs.

27. (*1*) Every such award shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions they are to be paid.

(*2*) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the Court shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

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8 In case of acquisition for a Company, although there is an agreement (section 41), difficulty may arise in realising the enhanced amount, while the Court's order is against the Secy. of State. Under section 66 of the Lands Clauses Consolidation Act of 1845, enhancements, including costs, under the Arbitrator's award even are enforceable by attachment or by action or suit in any of the superior Courts.

9 *Rai Bahadur Lala Narsingh Das vs. Secy. of State* (1924), 29 C. W. N. 822—the award is a decree under sub-section (2), as added by the amendment, and as such a decree as in an ordinary suit. It was a case of award under section 26 in a valuation reference.

10 *Secy. of State vs. Hindusthan Co-operative Insurance Society* (P. C) (1931) 132 I. C. 748, 35 C. W. N. 794, 61 M. L. J. 864.

Section applies to valuation references only.

The words "every such award" refer to awards made under section 26; and from the exposition given in the notes under that section, such award would be only on a matter of "valuation" in which the opposite party is the Collector (Government). The provisions of section 27 would therefore appear to relate to valuation references only, in which the question of costs arises as between the applicant and the Collector, and not to apportionment cases where the question is *inter se* the disputing claimants. The words "by what persons and in what proportion" would in this view be taken to refer to cases where there are several applicants, in the reference.

"Court" in this section, means the Court as defined in section 3 (d) *ante*, and not the higher Courts.[1] The costs of proceedings of the higher Courts are in the discretion of those Courts.

Costs—part of award :—

2. *Sub-section* (1): This sub-section requires that the "costs" should be stated (of course separately from compensation) in the award. "Costs" are therefore part of the award[2]. With the amendment of 1921, orders about costs are thus "decrees" and enforceable as such, and are appealable[3].

and enforceable as decree, and appealable.

3. The award of costs is a matter of discretion of the Court: but ordinarily it should "follow the event", and where it does not, the Court must state its reasons (see also section 35 of Civil Procedure Code, 1908). Where the Collector's award is maintained, the costs would ordinarily be borne by the referring claimant

[1] *Assistant Collector, South Salsette vs. Shapurji Cowasji* A. I. R. 1931 Bom. 528, 33 Bom. L. R. 1210, 136 I. C. 173.

[2] *Ekambara Gramany vs. Muniswami Gramany* (1907) 31 Mad. 328.

[3] *Muthu Veerappa Pillai vs. Revenue Divisional Officer, Melur*, A. I. R. 1931 Mad. 26, 129 I. C. 681, 59 M. L. J. 682. Orders about costs, being parts of the award which was appealable under section 54 *post*, were also appealable prior to the amendment of 1921 : *Bunwari Lal vs. Drup Nath* (1886) 12 Cal. 179 : *Dildar Ali vs. Bhabani* (1907) 34 Cal. 878. In the case of *Bamasundari vs. Verner* 22 W. R. 186 under the old Act of 1870, it was held that the order about costs was not appealable.

but in circumstances the Court may direct that each party should bear its own costs. Similarly where the Collector's award is enhanced, the costs shall ordinarily be paid by the Government. But apart from the discretion of the Court according to the circumstances of a particular case, sub-section (2) enjoins that where the objector made an extravagant claim or was negligent in putting his case before the Collector, the Court would make a deduction from the costs which would otherwise be charged on the Government. It is to be noted that no *ad valorem* court-fee is charged for claims in a reference, and there is no other check on extravagant claims to the distraction of the Court and the Government. From the general plan of the Act, it is also a duty of all persons interested to lay their cases as fully as possible at the earliest possible stage when the matter is under enquiry by the Collector [4]. Judged thus, these provisions are consistent with the general principle that costs may be disallowed in whole or part where the successful litigant has been guilty of "misconduct" or where some other valid reasons exist [5].

Costs—follow the event.

Exception.

Extravagant claim—Where even one-quarter of the excess claimed was not allowed by the Court, it was held that this justified the Court in ordering the claimant to pay the Government's costs in resisting the claim [6]. Where though the claim was extravagant but the extravagant amount did not increase the Collector's

Extravagant claim.

[4] One object as stated in the Second Report of the Select Committee is to prevent people from wilfully keeping back evidence in the proceedings before the Collector as to the value of the land so as to deploy it to a greater advantage before the Judge. The sub-section seeks to penalise such conduct. The words about negligence to put the case before the Collector, were added by the Act of 1894.

[5] *Rodeswar vs. Manroop* (1885) 13 I. A. 81: *Bhubaneswari vs. Nilcomul* (1886) 12 I. A. 137, 12 Cal. 18 : *Huxley vs. West London Extension Railway Co.* (1889) 14 A. C. 26 : Conduct of a party in matters leading up to the litigation is a relevant matter for consideration, *Bostock vs. Ramsay Urban District Council* (1900) 2 Q. B. 616.

[6] *Revenue Divisional Officer, Trichinopoly vs. Srinivasa Ranga Iyengar*, 1937 M. W. N. 1003.

costs at all and the appellant was substantially successful, it was held that the Collector should pay the claimant's costs [7]. Where the claim was exhorbitant and speculative a deduction at 5 per cent was made *ad valorem* on Rs. 5000/- and 2 per cent on the balance [8]. In a case in which the Collector had awarded land value at Rs. 20/- per "*cent*", the party claimed at the rate of Rs. 31/-, and the Court awarded at Rs. 28/-, it was held that the claimant ought to get his costs from the Collector [9]. See also section 35A of the Civil Procedure Code, regarding compensatory costs for false or vexatious claims.

Negligent in putting case before the Collector

Negligent in putting the case before the Collector :—Where the party had altogether omitted to appear or make a claim before the Collector, the question of costs may arise where the claimant cannot satisfy the Court that there were "sufficient reasons" for the omission [*vide* section 25(3) *ante*]. But where "sufficient reasons" are given and the Court allows an enhancement, the question ordinarily would be,—whether the claim preferred is extravagant or not. Where the party appeared before the Collector and made a claim, but failed to substantiate it, it is difficult to say that this section contemplates that he should be saddled with costs simply because he neglected to produce materials or explain his line of argument to the Collector [10]. The question will resolve thus to whether the claim is extravagant or not.

[7] *Narsingh Das vs. Secy. of State*, A. I. R. 1928 Lah. 268, 112 I. C. 797.

[8] *Faiz Muhammad vs. Secy. of State* 107 P. R. 1912, 17 I. C. 901.

[9] *Akhilanandammal vs. Sub. Dy. Collector Trichinopoly*, 1932 M. W. N. 858.

[10] Campbell in his "Law of Land Acquisition" cites a number of cases before the Bombay Improvement Tribunal in which this question was discussed. One view expressed was that where the party had omitted to give facts bearing on the question of the value of his property, for example rents he was deriving and on which he relied, that would be a matter for considering costs. But where the claimants wished to take a different basis of valuation (it might be due to "increase of knowledge") than what he had laid before the Collector, that would not be a matter of "negligence" for the purpose of this section.

Unless the Court was of the opinion that the claim was extravagant, or that the claimant was negligent in putting his case before the Collector the claimant cannot be directed to pay the Collector's costs[11].

4. Where costs are awarded, the same method of calculating costs should be adopted in land acquisition cases as in ordinary suits[12] under the Civil Procedure Code[13].

Rules for assessment of costs.

Costs ordinarily comprise—(1) Court-fees on application, (2) Vakalatnama, (3) pleader's fees, (4) expenses of witnesses including experts, (5) process-fees and (6) costs of exhibits. The scale of assessment on these or other heads is regulated by the Rules and Circular Orders of the various High Courts [14]. Rule 36(b) Chapter VI of the Rules and Circular Orders of the Calcutta High Court, lays down as follows :—"Cases under Part III of the Land Acquisition Act shall be deemed to be suits and the fees allowable therein may be calculated either on the amount of compensation decreed *in excess* of the sum tendered by the Collector or any *smaller* amount which the Court in its discretion may think proper."

In a case before the Punjab High Court this principle of assessing costs on the amount in dispute only (that is the amount in excess of the Collector's award) was approved, the Court observing that "the Calcutta practice appeared to be equitable as the amount awarded by the Collector can always be withdrawn under protest by the claimant, and he gets interest

[11] *Dawood Sahib vs. Collector of Chingleput*, A. I. R. 1935 Mad. 279, 155 I. C. 280. This seems to mean that the two circumstances mentioned in sub-section (2) are the only circumstances in which the party can be directed to pay the Collector's costs or any portion of them.

[12] *D. A. V. College Management and Trust Society vs. Secy. of State* 37 I. C. 760, 126 P. R. 1916. See also *Paramanand vs. Secy. of State* 44 P. R. 1904, and *Ramzan Singh vs. Secy. of State*, 21 I. C. 270, 309 P. L. R. 1913.

[13] *Assistant Collector, Salsette vs. Damodar Das* A. I. R. 1929 Bom. 63, 114 I. C. 397, 53 Bom. 178.

[14] *Ekambara Gramany vs. Muniswany Gramany* (1907) 31 Mad. 328.

on it if it is not at once paid or deposited in Court"[15]. See also rule 4, Order 24 of the Civil Procedure Code.

Costs in cases of withdrawal or dismissal.

5. In a case of withdrawal of objection by the applicant in which the District Judge had allowed full costs, the High Court of Calcutta directed (in revision) that—"full costs can be allowed only if a suit has been dismissed on the merits. It is obvious therefore, that in no event should an order for costs have been made in excess of half the full fees of the suit"[16]. In cases of dismissal for default, Rule 37(b) of the Rules and Circular Orders of the Calcutta High Court lays down that—"the amount of the fee to be paid to the defendant's pleader shall be left to the discretion of the Court, provided that such fee shall not exceed the moiety of the fee calculated on the whole value of the suit under Rule 35".

English Law regarding costs.

6. The principles of assessment of costs under the English law are necessarily somewhat different, as the procedure is different. In the case of an arbitration or assessment by a jury all costs, to state generally, are borne by the promoters unless the award is the sum or a less sum than offered by the promoters, in which case each party bears his own cost (sections 34 & 51 of the Lands Clauses Consolidation Act, 1845).

Collector may be directed to pay interest on excess compensations.

28. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession

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[15] *Paramananda and others vs. Secy. of State.* 44 P. R. 1904.

[16] *Nanhilal Agrari vs. Secy. of State* (1909) 11 C. L. J. 217.

of the land to the date of payment of such excess into Court.

Scope of the section.

This section provides for payment of interest at 6 per cent per annum, on *the amount by which the Court enhances* the Collector's award, calculated from the date of the Collector's taking possession under section 16 to the date of payment of such excess into Court. No question of interest on *the amount awarded by the Collector* arises, because the party must have either taken payment or the amount must have been deposited with the Court under section 31(2) which is equivalent to payment[1] to the party. As regards interest for the period between Collector's possession and his payment or deposit see section 34 *post.*

Enhancement on which interest is to be allowed includes enhancement made by the Appellate Court[2].

Interest is discretionary with the Court.

2. The words "may direct" mean that the award of interest is discretionary with the Court[3]. In the case of *Lala Narsingdas*, the Privy Council observed :—"A small matter of the judgment was the omission of the right to interest to which the appellant is entitled at the rate of 6 per cent as from the date when the land was acquired." [4] Unless there were special reasons which must be stated, interest should be paid as laid down in this section[5]. Where the claim was not extravagant and was allowed to a considerable extent, interest was

[1] See the exposition of the Collector's liabillity when he has deposited the amount awarded by him, under section 31 (2), in *Joynarain Chunder vs. Secy. of State* (1936), 40 C. W. N. 989.

[2] *Narsinghdas vs. Secy. of State*, A. I. R. 1928 Lah. 263, 112 I. C. 797 : *Khusal Singh vs. Secy. of State*, 53 All. 658, A. I. R. 1931 All. 394, 133 I. C. 611.

[3] *Rangaswami Chetty vs. Collector of Coimbatore*, 51 I. C. 744.

[4] *Lala Narsinghdas (Rai Bahadur) vs. Secy. af State*, 52 I. A. 133, A. I. R. 1925 P. C. 91, 6 Lah. 69, 29 C. W. N. 822.

[5] *Ramprasad vs. Collector of Aligarh* 40 I. C. 274 : *Ramsaran Das vs. Collector of Lahore* 9 I. C. 228.

allowed at the rate of 6 per cent under this section[6]. Interest under this section is payable also on the statutory allowance under section 23(2) on the enhanced amount[7].

3. Where the High Court reduces the Reference Court's enhancement and the party has already withdrawn from the Reference Court the enhanced amount, the Collector is entitled to a refund of the excess with 6 per cent interest[8].

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[6] *Subramania Aiyer vs. Collector of Tanjore*, 97 I. C. 938, A. I. R. 1926 Mad. 1016.

[7] *Nilkanta Gonesh Naik vs. Collector of Thana*, 22 Bom. 803 (a decision under old Act X of 1870).

[8] *Collector of Ahmedabad vs. Lavji Mulji* (1911), 10. I. C. 818, 35 Bom. 255.

Part IV.

Apportionment of compensation.

This Part, as the heading indicates, relates to "apportionment" only. The Collector's award includes apportionment (see section 11 *ante*), and when he proceeds to apportion any amount which he has determined as the market-value of the land or as damages, amongst the several persons interested, such persons may agree amongst themselves as to the manner of the apportionment, or may not. Where they agree, the provisions of section 29 apply. Where they do not agree, the Collector either makes an apportionment on the basis of the materials or information available to him, *or*, when he is unable to do so, makes a joint award in the names of the several claimants together. In the former case, the remedy of the party who disputes the Collector's apportionment is to apply for a reference under section 18 *ante*. In the latter case, that is where the Collector makes a joint award, section 30 would apply and the Collector would make a reference to the Court *suo motu*, for an adjudication of the dispute.

Particulars of apportionment to be specified.

29. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

Scope of the section.

Section 29 is intended to apply to the proceedings before the Collector, and so is not placed in Part III of the Act, which deals with the proceedings of the Reference Court. Agreement amongst contending parties when before the Court would be governed by the provisions of the Civil Procedure Code, and no separate

provision in necessary (see section 53 *post*). Moreover, this Part deals with "apportionment" only, and a decision on a matter of apportionment by the Court is not an "award" (vide section 26 *ante*). The term "award" in this section means, therefore, the Collector's award under section 11. In the case of an apportionment dispute over the Collector's award, "from the moment when the sum has been deposited in the Court under section 31 (2) the functions of the award have ceased, and all that is left is a dispute between interested people as to the extent of their interest" [1].

Applies to agreements before the money deposited in Court.

2. The language of the section is wide enough to include both the stage prior to the making of the award under section 11, and the stage after the award till the Collector has sent the compensation-money to Court. Section 11 requires the Collector to apportion the compensation-money amongst the several persons interested in it. There may be disputes amongst these persons (e. g. mortgagor and mortgagee, lessor and lessee, landlord and tenant, co-sharers, counter-claimants and so forth), and they may settle their disputes amongst themselves *before* the Collector has made his award : and the Collector would then specify the apportionment in his award according to such agreement. But the parties may not be able to come to such an agreement before such award, and the Collector would have then to apportion according to his own view on the materials and information available to him. The parties may later on, but before the Collector has sent the money to the Court, come to terms and desire the Collector to apportion and make payment according to their agreement. This section permits them to take this course without having to go to the Court, and the Collector would note the particulars of the agreement in the award and take further action accordingly.

There may also be cases in which the Collector cannot, on the materials before him, make any apportionment of the amount

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[1] *Ramchandra Rao vs. Ramchandra Rao* (P. C.), A. I. R. 1922 Mad. 80, 49 I. A, 129, 67 I. C. 408, 45 Mad. 320, 26 C. W. N, 713, 24 Bom. L. R. 963,

at the time he makes his award under section 11. He would then make a joint award and refer the matter to the Court under section 30 *post* : but if the parties in the meantime come to an agreement they may avoid the trouble of recourse to the Court by filing their agreement under this section, provided the Collector has not sent the money to the Court under section 31(2).

Conclusive effect of.

3. When apportionment is made in pursuance of the agreement, then as between such persons the award shall be conclusive evidence of the correctness of the apportionment. This means that as amongst such persons, a reference under section 18 or an action under the third *proviso* to section 31(2) *post*, would not be maintainable. Nor would it be open to any of these persons to dispute the apportionment made by the agreement as amongst the agreeing parties where any other party obtains a reference under section 18.

Dispute as to apportionment.

30. When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

See general note at the beginning of Part IV.

Difference between reference under section 18.

This section contemplates reference to the Court by the Collector *of his own motion*, as distinguished from a reference on an application by a party under section 18 *ante*. Another point of difference is that while section 18 lays down certain time-limits, there is no time-limit for a reference under this section.

2. Read with section 18, this section would seem to apply ordinarily only to cases where the Collector has not been able

to make an apportionment of the amount of compensation amongst the several persons interested in it, but has made a joint award in the names of all of them together, *vide* section 11 *ante* and notes thereunder. For, where the Collector has made an apportionment of the amount amongst the several claimants on the materials and information available to him, the only remedy of the party who is aggrieved with the Collector's apportionment, is to apply under section 18 within the time specified in it. If he fails to do so, his remedy is barred (see notes under section 18 *ante*), and section 30 is not intended for rectificatien of the claimant's default.

Section applies only where there is joint award.

One possible exception where section 30 may be applicable in a case where the Collector has not made a joint award, is when after he has made his award under section 11 and before he has made payment, a new person not previously before him, appears and makes a claim.

Where on a joint award there is a reference under section 18.

3. The Collector need not make a reference under this section although he has made a joint award, if one or some of the claimants have obtained a reference under section 18. The words used are "may refer". But an *impasse* may arise if such person withdraw in the Reference Court. There will be no reference before the Court on which it can adjudicate for the disposal of the money. The Collector may no doubt send up a reference then under this section, there being no time-limit: but it is obviously desirable that whenever he makes a *joint award* and sends the money to the Court under section 31(2) *post*, he should also make a reference under section 30, whether any of the claimants has applied for reference under section 18, or not.

Where the Collector improperly omits to refer under section 30.

4. If the Collector does not make a reference under this section where he ought to, the party's remedy whether by application for revision to the High Court or otherwise, is uncertain and unsatisfactory as in the case of an improper rejection of an application under section 18, discussed in paragraphs 17 to 20 of the notes under section 18 *ante*.

Scope of section restricted to disputes about apportionment only.

5. *Dispute arises* :—A dispute for the adjudication of which a reference would be made under this section, must be about the apportionment of the amount of compensation determined by the Collector, and not about the adequacy of that amount. The words "or as to the persons to whom the same or any part thereof is payable", are more or less explanatory of what is meant by "apportionment". These words make it clear that apportionment does not simply mean division of the amount amongst the several claimants (such as by shares or the like) but also includes cases where the *entire amount* is claimed by each of the contending parties [2].

Collecter no party.

6. The subject-matter of a reference being thus only a dispute between interested people as to the extent of their interest in the total amount, and not about the adequacy of that amount, the Collector is no party in a reference under this section, just as he is no party in an apportionment reference under section 18. The difference in the case of a reference under this section in the matter of procedure, is that there is no applicant who is in the position of a plaintiff who would ordinarily have to lead the evidence. The court has to decide on whom the burden of proof lies and who should, in the circumstances of the case, lead the evidence.

Application of sections 19 to 21.

7. There is no specific mention whether sections 19 and 20 or section 21 should apply to a reference under section 30. In the absence of any other corresponding provisions, the same rules will presumably apply *mutatis mutandis*. The Collector should state the names of all persons interested in the dispute, and questions may arise in the Court for addition of further parties.

Principles of Apportionment.

8. As explained in paragraph 2 of the notes under section 23 *ante*, the broad principle for compensation in compulsory

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2 *Kashim vs. Amin Bi* (1891) 16 Bom. 625.

acquisition is that every person interested who suffers a loss by reason of the acquisition should be compensated for the loss he suffers. It follows that in apportioning the market-value of the land acquired, amongst several persons interested such as mortgagor and mortgagee, landlord and tenant, the distribution should, as far as possible, be such as gives to each the value of the quantum of interest which he loses by reason of the acquisition. Or, as has been observed in a case before the Calcutta High Court [1] "each party should show the amount of compensation to which he claims to be entitled" ; and he may do this "*either* by representing his own rights, *or* by representing the rights of the other parties and showing that he is entitled to the balance." Where the market-value of the land is obtained by valuing each of these interests separately and then adding them together, every person automatically gets the value of the interest he loses, if apportionment is made according to these separate valuations [2]. If however the market-value has been obtained by some other method, it may not agree with the total of the separate values when separately ascertained. In a simple case as that of a mortgagor and mortgagee, the latter may very well contend that he is entitled first to be reimbursed with the money to which he is entitled, and whatever the balance can only go the mortgagor. But it may not be possible to follow this plan in all cases, and it has been held that in circumstances, it may be necessary to divide the total value in the same proportion as the values of the separate interests when separately calculated [3].

The basic principle of compensating everyone for the loss he suffers.

9. Apportionment disputes rarely arise with regard to "damages" awarded by the Collector. Disputes which usually

[1] *Mahendra Nath Bose vs. Harish Chandra Hazari,* A. O. D. No. 235 of 1886.

[2] The question of the amount to which the owner of a particular interest is entitled, may then very well be a question of valuation and not apportionment, provided the "reference" is properly framed.

[3] *Surendra Nath Sarkar vs. Pyari Charan Law,* A. I. R. 1938 Cal. 740, 42 C. W. N. 1191, 67 C. L. J. 182.

arise are with regard to the amount which he determines as the market-value of the land, and in the following manners :—

(*i*) as between mortgagor and mortgagee which involves issues as in a mortgage-suit :

(*ii*) as between co-sharers, which involves settlement of shares as in a partition suit for this purpose :

(*iii*) as between disputants regarding title which involves issues as in a title-suit :

(*iv*) as by a decree-holder or holder of an order of attachment, which involves the question whether the decree or attachment-order affects the compensation money awarded :

(*v*) as by a beneficiary or the like :

(*vi*) as between dominant tenement and servient tenement, regarding easement rights.

(*vii*) as between landlord and tenant, lessor and lessee :

Where of the nature of ordinary civil suits.

10. Disputes of the nature (i) to (v) above would be dealt with in the Reference Court more or less as similar disputes in an ordinary civil suit : and the distribution of the amount of compensation would follow the findings of the court reached in this manner. Questions of title as may be involved in such disputes must be decided by the Reference Court, and it cannot refer them to the ordinary Civil Court or dismiss the Reference because such question are involved [4].

Mortgagor and mortgagee.

In *Prokash Chandra Ghose vs. Hasan Banu Bibi* [5]—"On the 28th. Sept. 1912, the appellant advanced—Rs. 5000/- to the respondent on mortgage of four properties in Calcutta. This mortgage money was repayable on 28th. Sept. 1913". The Collector made his award on 20th. Sept. 1912. "On the 11th. Oct. 1912, the

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[4] *Harish Chandra vs. Bhobotarini Debi* (1900) 8 C. W. N. 321 : See also *Mangaldas vs. Asstt. Collector, Ahmedabad* (1920) 23 Bom. L. R. 188. For decision prior to 1894 see *Nobodeep Chander vs. Brojendra Lall* (1881) 7 Cal. 406.

[5] (1914) 19 C. W. N. 389, 42 Cal. 1146, distinguishing the Privy Council case of *Baktwari Begum vs. Husaini Khanum* (1918) 36 All. 195.

mortgagee applied to the L.A. Judge that the money due under his mortgage, namely Rs. 5000/- as principal and Rs. 600/- as interest thereon for one year might be paid to him as compensation money". The L.A. Judge held that the mortgagee was entitled to interest for one month only. On appeal the High Court affirmed the judgment of the L.A. Judge and observed—"the contract between the parties cannot be performed according to its letter, by reason of circumstances beyond the control of the parties. No doubt the mortgagor agreed to keep the money for one year; but that was on condition that the land should remain security for the loan during the term."

Easements.

11. A dispute with the owner of dominant tenement when the land of the servient tenement is acquired, requires in the first place a determination of the question whether the former had acquired a legal right of easement. The question of compensation for the extinguishment of the right claimed would arise only when such legal right is proved. The claimant may then be entitled to be compensated for the loss he would suffer by reason of the extinguishment of his right as would follow from the acquisition. But as a matter of apportionment of the full value (that is the value as if the land was free from the burden of easement) of the land acquired, the entire amount of such compensation would not necessarily come out of that full value: see paragraphs 96 etc. of the notes regarding "easements", under section 23 *ante*. So far as this apportionment is concerned the point for determination is—by how much the full value is reduced by reason of the existence of the easement right.

Landlord and Tenant

(a) *Urban tenancies.*

Tenancies at will in urban areas.

12. The question of apportionment between landlord and tenant is more complex, particularly when the conditions are regulated by special or local laws as when the tenancies are for agricultural purpose. In urban areas, where there is no restriction by such

laws the conditions are governed entirely by the terms of the agreement between the parties. The tenants hold either on monthly leases or on leases for a period. Where they hold on monthly leases or on leases which are terminable by notice at the lessor's will, the tenant is not treated as having such interest in the land for which compensation would be payable out of the market-value of the land [6]. But still there may be circumstances in which such a tenant-at-will may be entitled to a portion of the land-value. In a case before the Calcutta High Court [7], where there were merchant-tenants who had built their places of business on the land, it was observed—"although the interest of these merchant-tenants is so precarious that they themselves may be compelled to leave the land at the will of the superior landlord, still their interest in the land is frequently sold and substantial prices are paid by the purchaser". They were thus paid the market-value of their interest in the land.

Leaseholds in urban areas.

13. When there is a lease for a term, however short, and it is not at the option of the lessor to terminate it before the expiry of the term, the lessee is entitled to the value of his interest in the land for the unexpired period, out of its full market-value. Under the English law where the land is in the possession of a person having no greater interest therein than as a tenant for a year or from year to year, he is entitled to compensation for the unexpired term or interest in the land [8]. As for other aspects of leasehold interests and for long term leaseholds, see paragraphs 104 etc. of the notes on "Valuation of Leaseholds" under section 23 *ante*. Where the lessor's interest and the lessee's interest have been separately valued and then added to determine the market-value of the land, the apportionment would follow automatically. But where the total value has first been independently ascertained,—that is to

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[6] *Secy. of State vs. Belchambers* (1905) 33 Cal. 396, 10 C. W. N. 289.

[7] *Girish Chandra Roy Chowdhury vs. Secy. of State* (1919) 24 C. W. N. 184. See also *Sadhu Charan vs. Secy. of State* 55 I. C. 150, 31 C.L.J. 68.

[8] Section 121 of Lands Clauses Consolidation Act, 1845.

say as if the land was held by the owner as an estate in fee-simple without any tenant or lessee,—the proper process ordinarily would be to find out the value of the interest which the tenant or lessee would be losing and apportion to him that value, and then apportion the residue to the land-lord or lessor [9]. But difficulty may arise when the total value thus obtained, is not objected to either by the lessor or the lessee. In such and similar circumstances it may be necessary to divide this total value in the same proportion as the value of the lessor's interest and the value of the lessee's interest separately calculated, so that the benefit or loss is proportionately shared by both. This was what was laid down in the case of *Surendra Nath Sarkar* referred to before.

(b) *Agricultural tenancies.*

Bearing of Local tenancy laws.

14. Questions regarding apportionment of the land-value between a landlord and a tenant in agricultural areas, depend upon the system of land-tenure which prevails in the locality, and the local or special tenancy laws which regulate the rights and liabilities *vis-a-vis* the parties. These differ in different Provinces, and the local tenancy laws have also undergone substantial changes from time to time in many of the Provinces. These facts have to be borne in mind when studying the views expressed in the various decisions of the different High Courts.

Tenancy system broadly outlined.

Broadly put, there is first the "raiyat" or the "base-tenant" who pays a rent to a landlord. This landlord may be either the Government itself [10] or he may be a zeminder [11] who pays the land-revenue assessed on the lands comprised in his estate or zemindary. In some Provinces, as Bengal and Bihar, there are

[9] Just as in the case of a mortgagor and mortgagee—the mortgagee must be paid his full dues first, and what remains goes to the mortgagor.

[10] For example in the greator part of Madras, in Bombay and in parts of the Punjab and Assam. In other Provinces there are also Government estates in which the raiyat pays rent directly to Government.

[11] In N.W.F. Provinces and Oudh called "talukdars".

intermediate landholders between the raiyat and the zemindar. They are called by various names in different localities, but all go by the generic term "tenure-holder." The raiyat is ordinarily the person who cultivates the land himself or by hired labour : but sometimes he sub-lets to "under-raiyats" who pay him rent either in money or by a share of the produce. By far the bulk of the "raiyats" possess occupancy right by the operation of the local tenancy laws, that is to say they can hold their lands for indefinite period and enjoy the usufruct so long as they pay the rent, and they cannot be evicted at the will of the landlord. The "under-raiyat" has somewhat inferior rights, but in some Provinces they also may possess almost as stable a right of occupancy as the "raiyat."

16. Forgetting for the moment the existence of any under-raiyat, in compulsory acquisition "the parties who usually suffer most are either the raiyats with right of occupancy or the holders, whoever they may be, of the first permanent interest above the occupancy raiyats. The actual occupier, is of course turned out by Government, and if he is a raiyat with right of occupancy, he loses the benefit of the right besides being driven possibly to find a holding and a home elsewhere"[12]. The loss of the landlord is the rent which the raiyat pays and the loss of the raiyat is the value of the produce he gets *less* his rent and the cost of cultivation. This gives, though more or less in the abstract, a measure of the proportion of the land-value which should go to either party. If the rent is taken at one-fourth of the gross produce (as is the standard in Madras) this proportion would be about 1 : 1 between the raiyat and landlord ; if it is taken at one-twelfth (as is about the average in Bengal) it will be 5 : 1. But this assumes the same security both for the rent-receiver and the produce-receiver. The produce-receiver, however, has with him all the risks of the vicissitudes of the season, while for the rent-receiver, his rent is more secure[13].

[12] *Godadhar Das vs. Dhunput Singh* (1881) 7 Cal. 585 at p. 589.

[13] Except where the rent is a share of the produce, in which case the landlord shares also the risks of the season.

Reasons for which landlord may claim more than the capitalised value of the tenant's rent.

17. Apart from this, the various reasons for which the landlord may be entitled to something more than the capitalised value of the rent as discussed in several cases of the Calcutta High Court, are :—

(1) Chances of obtaining an enhancement of the rent in the near future [14].

(2) Chances of the tenancy coming to an end and lapsing to the land-lord [15].

Other collateral questions are whether the the raiyat possessed the right to transfer, whether in the case of his rent falling into arrears he was liable to be ejected, and whether in the event of failure of legal heir the holding was liable to lapse to the landlord.

The second point, viz. chances of the tenancy coming to an end and lapsing to the landlord, really does not arise when the raiyat possess occupancy right [16]. It may, if there was a failure of legal heir : but that would be too remote and speculative a contingency to justify an increased value for the landlord. The question of eviction on the ground of non-payment of rent does not arise in Bengal where since the Tenancy Act of 1885, an occupancy raiyat cannot be ejected on this ground, but his holding would be sold in execution of decree, the defaulting tenant being entitled to the balance of the sale proceeds after meeting his dues to the landlord. This is the law regarding occupancy raiyats in most other Provinces : but where it is not, this may be a matter for consideration.

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[14] *Shama Prosunno Bose vs. Brakoda Sundari Dasi* (1900) 28 Cal. 146 : *Dinendra Narain Roy vs. Teturam Mukerjee* (1903) 30 Cal. 801, 7 C. W. N. 810 : *Bhupati Roy Chowdhury vs. Secy. of State* (1907) 5 C. L. J. 662 : *Aghori Koeri vs. Kishundas Narain*, A. I. R. 1926 Pat. 16, 88 I. C. 397, 6 P. L. T. 797 : *Manmohan Dutt vs. Collector of Chittagong* (1912) 40 Cal. 64.

[15] *Sakariyamo Dakolo vs. Moriamo Dakolo*, A. I. R. 1930 P. C. 261, 128 I. C. 660. Also see *Godadhar Dass vs. Dhunpat Singh* (1881) 7 Cal. 585.

[16] *Bhupati Roy Chowdhury vs. Secy. of State*, (1907) 5 C. L. J. 662.

Case of Shama Prasanna Bose.

18. The rent of a raiyat is ordinarily enhancible, subject to restrictions as laid down in local laws; but in "permanently settled" areas, his rent may be fixed and not enhancible. In a Bengal case of 1900[17], it was held (per Maclean C. J.) that where there is a chance of enhancement of the tenant's rent, the landlord is entitled "to have the value of this chance of enhancement assessed, and to have a money-value put upon it, and to take that money-value out of the compensation awarded". But apart from this, his Lordship observed "I do not think the landlord can be entitled to anything more (over and above the capitalised value of the rent), nor have I heard it suggested that it can be." It followed that where the rent was fixed in perpetuity (makarari), the landlords (of all grades together) would not be entitled to anything more than the capitalised value of the raiyat's rent: and the practice in such case has thus usually been to apportion one-fourth of the land-value to them, and three-fourths to the makarari raiyat. This, it will be noticed, is about the same as the proportion of 5 : 1 between the raiyat and the landlord worked out in paragraph 16 *ante*.

Proportion of three fourths for makarari raiyats-Bengal.

Proportion of one-third where rent enhancible—Bengal.

19. Where the rent is enhancible, it was observed in the same case—"It may be in some, perhaps in many cases, be somewhat difficult to arrive at the true capitalised value to the landlord of this chance of enhancement, but it will be for the landlord who sets up such a claim, to make it out, and show what the true value is"[18]. The case of *Bhupati Roy Chowdhury vs. Secy. of State* (1907) 5 C.L. J. 662, shows one way of valuing the chance of enhancement. This chance was that the rent might be enhanced after 1913 by two annas in the rupee, and

[17] *Shama Prasanna vs. Barkoda Sundari Dasi*, 28 Cal. 146.

[18] For a full discussion of the principles see the case of *Dinendra Narain Roy vs. Teturam Mukerjee* (1903) 30 Cal. 801, 7 C. W. N. 810 —though a case of apportionment between the zemindar and tenure-holders—and the several cases referred to therein.

the Judge after capitalising the existing rent at 20 years' purchase, added also 20 years' purchase of the possible enhancement of two annas per rupee [19]. This was upheld by the Calcutta High Court, per Maclean C. J. As a rough and ready rule in Bengal till 1928 when the right of transfer was not recognised in the raiyat whose rent was enhancible, a common practice was to raise the landlord's proportion to one-third, giving the raiyat the remaining two thirds or as 6 annas and 10 annas : but this gave a higher proportion for the landlord than what was worked out in *Bhupati Roy Chawdhury's* case.

No hard and fast rule of proportion possible.

There cannot obviously be a hard and fast rule for the proportion (whether 4 annas and 12 annas or 6 annas and 10 annas), for, the incidence of the rent of the raiyat in one case may be low and in another case high even when other things are similar. The landlord's proportion in the former case will be lower, and in the latter case higher.

Different proportions where rights different :— Allahabad

20. The proportion may be materially different where the raiyats have lesser rights than in Bengal, the landlord thus having greater chances of increased profit. In an Allahabad case [20] of 1929 the proportion was reversed—the landlord getting 10 annas and the raiyat 6 annas. Here the raiyat's position was this—he had not only no right to transfer and only a restricted right to sub-let, but in case of rent falling into arrears from whatever reason, he was liable to be ejected, and further that in case of his dying without one of the statutory heirs, the tenancy would lapse to the landlord. So also in a Madras case [21]

[19] See also the Bihar Case of *Aghori Koeri vs. Kishundas Narain* A. I. R. 1926 Pat. 16, 88 I. C. 397, 8 Pat. L. R. 111, 6 P. L. T. 797, where besides the possibility of enhancement within the next 20 years, the raiyat could not transfer without the landlord's consent.

[20] *Rohan Lal vs. Collector of Etah*, A. I. R. 1929 All. 525, 51 All. 765.

[21] *Bommadevera Venkata (Sri Raja) vs. Subbarayudu* (1911) 36 Mad. 895, following *Appasami vs. Rangappa* (1880) 4 Mad. 267. See also *Venkata Narasingha vs. Subbarayadu* (1918) 25 M. L. J. 17.

—Madras

—Punjab

of 1911, where the position of the landlord was not so advantageous, the raiyat was given three-fifths and the landlord two-fifths. In a Punjab case, the proportion between an occupancy tenant and his landlord was put as the same as between the *malikana* the tenant paid to the landlord and the land-revenue paid by the landlord to Government [22].

Increase in the landlord's portion not to affect the market-value of raiyat's interest where he has a right to sell.

21. But howsoever the proportion for landlord may be increased, the raiyat, where he possesses a right to transfer his interest (as in Bengal now), can very well contend that he must not get less than what value he might get if he had sold his interest in the market; and that any increase in the proportion meted out to the landlord cannot come out of that value, to the reduction of the market-value of his interest. Looked at in this light, the case of each would appear to be a matter of valuation and not apportionment [23] and when before the Reference Court, it would depend much on the form in which the reference on which it has to adjudicate, is presented.

Even when the raiyat has not got the full right of transfer, but as a matter of custom he does often sell his interest, though the purchaser may have later on to pay a *salami* to obtain recognition, there would seem to be no reason why he should get less than what he might obtain by selling his interest. Where the amount of *salami* is fixed by custom or by law, the landlord

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[22] *Ram Kishen vs. Jati Ram*, A. I. R. 1931 Lah. 649. 132 I. C. 698.

[23] See the observation of King J. in *Shiam Lal vs. Collector of Agra* (1933) (F. B.), 55 All. 897, at page 910. Where the compensation payable to the landlord and to the tenant is calculated separately and independently, "the question of apportionment between landlord and occupancy raiyat does not arise.........It is only in exceptional cases where the land has a special value as a potential building site, that the question of apportionment arises",

would be entitled to that amount in addition to the capitalised rent [24].

Apportionment when land with agricultural tenant having occupancy right, is valued as building site

22. Where land is held by an agricultural tenant with occupancy right, who cannot construct a building on it but the land is valued as a building site, [25] there has been divergence of views as to how this value should be apportioned. In a case [26] of 1926, the Calcutta High Court held that the raiyat was entitled to get only as much as the value of his interest as an agricultural tenant, and the whole of the balance would go to the landlord. Similar sentiment was expressed by the same High Court in a later case [27] of 1931 in which it was observed that the amount to which the tenant was entitled depended upon "the extent to which the landlord had carved rights out of his estate and given them to the tenants". The Allahabad High Court had, however, held in an earlier case [28] of 1912 that when the land held by an agricultural tenant with occupancy right was valued as a building site, the division of the value should be made in the same proportion as the existing "annual values" of the tenant's interest and the landlord's interest when separately calculated ; and this in that case gave a proportion of two-thirds for the tenant and one-third for the landlord. The question came up before a Full Bench [29]

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[24] As in the Bihar case of *Abdul Haque vs. Secy. of State* A. I. R. 1932 Pat. 120, 137 I. C. 226, 11 Pat. 354, where the customery *Salami* was a *chauth* or one-fourth of the consideration-money received by the vendor.

[25] See paragraph 51(4) of the notes under sec. 23 *ante*, at pp. 177-8.

[26] *Nibash Chandra Manna vs. Bepin Behari Bose*, A. I. R. 1926 Cal. 846, 53 Cal. 407.

[27] *Collector of Jalpaiguri vs. The Jalpaiguri Tea Co. Ltd.* (1931) 58 Cal. 1345. In this case the tenant was holding over after the expiry of a lease for 7 years, and neither the law nor custom appeared to give him an occupancy or permanent right.

[28] *Hirday Narain vs. Powell* (1912) 35 All. 9.

[29] *Shiam Lal vs. Collector of Agra*, A. I. R. 1934 All. 289, 55 All. 897. Mukherji J., agreeing, observed that "he was unable to discover any valid reason for making a distinction between the methods of apportionment" when land was valued as agricultural land and when it was valued as a building

of the same High Court in 1933 when the above case and other cases were reviewed. Sulaiman C. J., after narrating the relative rights and dissabilities of the landlord and tenant, analysed the position thus :—"If the zamindar were to sell his land occupied by occupancy tenants in open market he cannot get a higher price than what would be calculated on the basis of the rent realised by him, because the occupation by the occupancy tenant stands in the way of his building upon it. On the other hand, it is also clear that an occupancy tenant has no right to build upon the land without the permission of the zamindar and such permission would not ordinarily be obtained without the payment of a heavy *nazarana*". On the side of the zamindar, he might perhaps obtain a surrender by the tenant of his occupancy rights by paying a value to him. Considering all these aspects and in the absence of any definite evidence to justify special treatment (e. g. that the tenant had spent money on an extraordinary improvement of the land) he adopted the same proportion as in a case [30] in which land was valued as merely agricultural land, the rights and disabilities of the tenant being otherwise similar. The proportion in that case was six annas for the tenant and ten annas for the landlord.

Apportionment *inter se* several grades of landlords—general principle.

23. When the full market-value of the land, howsoever obtained, has been apportioned between the "base-tenant", viz. the raiyat (including underraiyats, if any) on the one side, and the landlords on the other, question of further apportionment of the amount to the landlords would arise when there are several grades of them. So far back as 1860, the Sadar Dewany Adalat of Calcutta laid down a general principle which in substance applies still. It was a case [31] in which there was the zemindar and below him a *putnidar* holding a

site, the principle in either case being "the proportionate values of the interests of the people who have anything to do with the land".

[30] *Rohan Lal vs. Collector of Eta*, A. I. R. 1929 All. 525, 51 All. 765.

[31] *Sreenath Mukherjee, vs. Maharaja Mahatap Chand Bahadur*, S. D. A. 1860, pp. 385-86.

putni-tenure under Bengal Regulation VIII of 1819. It was held that the zemindar and the *putnidar* are entitled to compensation in proportion to the losses which they respectively sustain from the appropriation of their lands. The loss which each one suffers is *prima facie* the rent of the land acquired which he loses. In the case of *Gordon Stuart & Co.* (1863) [32], the same principle was put in another form,—"where lands are taken compulsorily, the principle upon which the amount of compensation is divisible amongst the zemindar and the holders of several subordinate tenures, is by ascertaining the value of the interest of each holder of a tenure, and to give him a sum equivalent to the purchase money of such interest". In a case of 1873 [33], Couch C. J. observed—"The compensation ought to be apportioned between the parties according to the value of the interest which each of them parts with. The zemindar has a right to the fixed rent, and the loss he sustains is of so much of his rent" : and so for every grade of tenure-holder in the chain. These and subsequent decisions are fully discussed in the case of *Kumar Dinendra Narain Roy* (1903) [34], in which it was held that—"the Court ought to proceed on the principle of ascertaining what is the value of the interest of the zamindar on the one hand with which he has parted, and that of the tenant (a tenure-holder) on the other, and to apportion the compensation money between them in accordance with those values".

The broad principle being thus understood, the various decisions of the Courts on particular circumstances as arose, may now be followed :—

Where in a *putni* lease there is a stipulation that the zamindar wouid not give any abatement of rent in case of acquisition of a part, he is not entitled to any compensation, because

[32] *Gordon Stuart & Co. vs. Mahatap Chand Bahadur* (1863) 1 Marshall's Rep. 490.

[33] *Raye Kishori Dassi vs. Nilcant Dey* (1873) 20 W. R. 370.

[34] *Dinendra Narain Roy (Kumar) vs. Teturam Mukherjee* (1903) 30 Cal. 801, 7 C. W. N. 810, per Maclean C. J,

he loses nothing and the chance of the *putni* lease coming to an end by sale or forfeiture was difficult to appreciate [35].

It follows that where there is a rent-free tenure within a zemindary, such as *brahmottar* or *pirottar*, the zemindar is not entitled to any part of the compensation [36].

Prima facie the zemindar has the whole of the interest; it is for the tenure-holders to show what part of the interest, the zemindar has divested himself of in their favour [37].

Stipulations for apportionment.

24. A covenant in a lease stipulating in what proportion the compensation money for the land would be divided between the parties, in the event of the land being acquired under the Act, is binding on the parties. It has also been held that a covenant in the lease stipulating that the whole of the compensation money for land should be received by the landlord alone, is valid in law and enforceable, and is not contrary to public policy [38].

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[35] *Biprodas Pal Chowdhury vs. Kumar Sarat Chandra Singh* (1907) 11 C. W. N. 151 (N), 16 C. L. J. 207, 17 I. C. 168 : *Gunpat Singh vs. Moti Chand* (1912) 18 C. W. N. 103, 16 C. L. J. 301.

[36] *See Raja Jyoti Prasad Deo Bahadur vs. Kenaram Dubey*, A. I. R. 1933 Cal. 767, 37 C. W. N. 702. In case of dispute, when the land is being actually held rent-free, the burden of proof that it is liable to rent (that is to say that there is a prospect of the zemindar of deriving a profit) is on the zemindar. For the general position of the parties in such dispute, see the leading case of *Harihar Mookerjee vs. Madhab Chandra* 14 M. I. A. 152. Also *Krishna Kalyani vs. Braunfield* (1915), 36 I. C. 184, 20 C. W. N. 1028 : *Jagdeo Narain Singh vs. Baldeo* (1922), 49 I.A. 399, 27 C. W. N. 925 : *Makhan vs. Rupchand* (1929) 33 C. W. N. 1168.

[37] *Radhu Ray vs. Raja Jyoti Prasad Singh Deo* (1932) A. I. R. 1933 Cal. 21, 36 C. W. N. 866.

[38] *Gadadhar Bhatta vs. Lalit Kumar Chatterjee* (1909) 10 C. L. J. 476 in which the English case of Re : *Morgan and L. & N. W. Ry. Co.* (1896) 2 Q.B. 469 was followed. See also *Uma Sankar vs. Tarini Chunder* (1883) 9 Cal. 571 : *Secy. of State vs. Bijoy Kumar Addy* A. I. R. 1925 Cal. 224, 40 C. L. J. 308. As for stipulation as to abatement of rent see *Gadadhar Das vs. Dhanput Singh* (1881) 7 Cal. 585.

Non-occupancy raiyat.

25. The raiyat or the "base-tenant" mentioned before, generally possesses right of occupancy by possession for over 12 years or otherwise according to local tenancy laws. Where they do not possess such rights, as for instance non-occupancy raiyats in Bengal and Behar, the difference between them and an occupancy raiyat, so far as regards compensation, is that with the former the liability to enchancement of rent is greater and he is liable to ejectment for arrears : otherwise the difference is not great, and a non-occupancy raiyat acquires occupancy right in course of 12 years in any case. He is entitled to a portion of the land-value, only these matters would have to be taken into consideration [39].

Under-raiyat.

26. An under-raiyat has inferior rights, but he is a person interested [40], and may according to local laws or custom, possess very substantial rights, even right of occupancy and right to sell [41]. He is entitled to a share of the land-value according to the extent of his rights and disabilities, even when he is a yearly tenant [42].

Local tenancies of various names.

27. Non-urban tenancies have often local names in different Provinces or parts of Provinces, and their incidents, on which compensation would depend, are regulated by local custom, or are defined by statute. Judicial decisions regarding some of these interests are summarised below :—

Madras.

(1) "*Ulkudi Sukavasis*" and "*Payakaries*" in Madras are entitled to a portion of the land-value : and as between a *Mirasidar* and *Ulkudi* tenant, allowance should be made for the *Mirasidar's* reversionary interests [43].

Where Government by alienating its rights has introduced a *Shrotriamdar* above the *Mirasidar*, the *Shrotriamdar* is entitled

[39] *R. Mitter vs. Anukul Chandra Mukherji* (1904) 9 C. W. N. notes 282.

[40] *Har Gopal vs. Abu Bakar* 3 C. L. J. 36.

[41] As under the Bengal Tenancy Act as amended in 1928 and 1938.

[42] *Narain Chunder vs. Secy. of State* (1900) 28 Cal. 152, 5 C. W. N. 349.

[43] *Appasami Mudali vs Rangappa Nattam* (1880) 4 Mad. 367.

to compensation money and not the *Mirasidar* where the latter had only communal rights over waste land [44].

A landlord who has parted with only *kudiveram* interest in the land, retaining *malwaran* interest, is entitled not merely to the capitalised value of the rent, but more : and a division between him and the *kudiveram* tenant in proportion to one-third and two-thirds was upheld [45].

A tenant from year to year whose term has not expired is entitled to compensation [46].

Bombay.

(2) As between a *khot* tenant and the accupant of *Bhati* (waste) lands within the *khot*, the division may be in the proportion of two to one [47]. This rough and ready method is not applicable when the occupant has a defined area and pays assessment for it [48].

A tenant of *abadi* site who is only permitted to occupy a house so long as he lives in the village, is only a licensee and has no interest in the land for which he can get compensation [49].

Toka tenants are not to be treated as if on the expiry of their leases they would be rack-rented [50].

Chota Nagpur—Ghatwali tenures.

(3) The incidents of *Ghatwali* tenures in Chota Nagpur, and the adjoining districts of Bhagalpur etc. have been the subject of many judicial decisions. Generally stated such a tenure is *mokarari* (fixed rent) and is not resumable so long as the *Ghatwal* is willing and ready to perform the services although the Zamindar or the Government may not need such service. As governed by the terms of the old Regulation XXIX of 1814, the *Ghatwal* was

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44 *Sivanath Naicken vs. Nattu Rangachari* (1902) 26 Mad. 371.

45 *Natesa Ayyar vs. Kaja Musruf Sahib* A. I. R. 1927 Mad. 489, 50 Mad. 706, 100 I. C. 628.

46 *Ponniah Nadan vs. Deipanai Ammal* 52 I. C. 247, 36 M. L. J. 468. The share given in this case was one-sixteenth.

47 *Navroji vs. Spl. L. A. Officer* (1921) 46 Bom. 272, 23 Bom. L. R. 1288, 81 I. C. 427.

48 *Gajanan Vinayak vs. Asstt. Collector of Salsette*, A. I. R. 1924 Bom. 54, 85 I. C. 11.

49 *Shankar Gobind vs. Kisan* 45 I. C. 554.

50 *Govt. of Bombay vs. Khanderas R. C. Tapade* A. I. R. 1923 Bom. 417, 77 I. C. 187, 25 Bom. L. R. 794.

held to be only a limited owner entitled only to the interest on the compensation money (i. e. not its corpus)[51]. But it was held that when the *Ghatwali* was treated as a *mokarari* tenure, the *Ghatwal* was entitled to three-fourths share as against one-fourth of the Zemindar, i. e. proportionately to the rental profit of each as happened in that case[52].

Chittagong-Noabad Taluks.

(4) In *Noabad Taluks* in Chittagong (Bengal) the compensation for land as between Government and the holder of the *Taluk* would be divided in proportion to the rental profit of each according to the existing conditions. If Government raises the rent later it would only be for the reason that the rental assets of the *talukdar* would also have proportionately increased[53].

Bargadars in Bengal.

(5) A *bargadar* or *bhagdar* (also called *adhiar* or *bhagchasi*) in Bengal is a tenant who pays rent not in money but by division (usually half) of the crop actually grown. It was held in a case[54] of 1907 that when such a tenant was an under-raiyat he was not entitled to a share of the compensation-money awarded for the land he occupied. But since the amendment of the Bengal Tenancy Act in 1928[55], a *bargadar* under-raiyat has also substantial rights in the land and protection against eviction.

When a *bargadar* is a raiyat, be acquires occupancy right just as a raiyat paying rent in kind. The difference in the matter of compensation out of the land-value could arise from the circumstance that where his rent is as high as half the produce, the "annual value" which he loses is considerably less. This applies also to the *bargadar* under-raiyat.

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[51] *Ramchandra Singh vs. Raja Mahomed Jowhuruzuma Khan* (1875) 23 W. R. 376, 14 B. L. R. App. 7.

[52] *Bhageerath Moodee vs. Raja Khan* 18 W. R. 191.

[53] *Jogesh Chandra Roy vs. Secy. of State* (1918) 29 C.L.J. 53, 18 C.W.N. 581. In this case Government was allowed 30 times the rent it was receiving.

[54] *Shaikh Hasrat vs. Jagat Narain Ray* (1907) 11 C.W.N. notes cccxii.

[55] This Act however practically eliminates *bargadars* created subsequent to its enactment from the category of "tenants" : and the question may be whether they would be entitled to any share of the land-value, or be treated as only labourers.

PART V.

Payment

Part V first explains [section 31(1) and (2)] in what circumstances the Collector should himself make payment to the parties in whose favour he makes his award, and in what circumstances he should deposit the money in the Court. The third proviso to section 31(2) states that payment to any person under this section does not affect the liability of that person to a party who may be adjudged entitled to the money.

Analysis of the provisions in Part V.

Where the deposit is on account of a reference under section 18 or section 30, the disposal of the money will follow the Court's adjudication on the reference. Where the deposit is for the reason that the party has no power to alienate the land, section 32 provides for investment of the money by the Court, in the purchase of other lands or in Government securities. Incidentally, this section provides for the power of the Court to decide whether the party is or is not competent to alienate and thus receive the *corpus* of the money.

Sub-section (2) of section 32 states where the Collector has to bear the costs of investment.

Section 34 provides for interest from the date of Collector's possession to the date of payment or deposit by him.

Sub-sections (3) and (4) of section 31 deal with more or less a distinct matter, and provide that in certain circumstances, the Collector may, instead of awarding a money-compensation (under section 11), make other arrangement with the party e.g. exchange of land or the like.

Payment of compensation or deposit of same in Court.

31. (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested, entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submited :

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount :

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18 :

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section the Collector may, with the sanction of the Local Government, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrange-

ment with any person interested in the land and competent to contract in respect thereof.

Sub-section (1).

Tender of payment, —how made.

1. Payment is tendered by issue of a notice on the party fixing the date on which and the place where payment would be made. This notice is usually given along with the notice of award under section 12(2) in which the date on which possession would be taken is also mentioned.

Payment— how and where.

2. Payments by the Collector are made either in cash or by cheque or by money-order. In rural areas small sums are paid locally or at a place near the locality. In towns payment is usually made by cheque. Before making any payment the Collector has to make himself sure that there is no dispute regarding it, and also about the other contingencies mentioned in sub-section (2). To ensure that there is no dispute regarding title or apportionment, the Collector usually waits for 6 weeks from the notice under section 12(2), (viz., the time for filing any objection under section 18) before making payment to the party or depositing the money in the Court. In the case of incompetency to alienate, he need not wait to send the money to the Court.

When the Collector must deposit the money in the Court.

3. The Collector cannot make any payment himself, but must deposit the compensation awarded by him in the Court [1], in the following circumstances, viz.,

(i) When they (persons interested) do not consent to receive it;

(ii) Where there is no person competent to alienate the land; or,

[1] This follows generally the provisions in the English Lands Clauses Consolidation Act, 1845 under Chapter "Application of Compensation," with respect to such "compensation coming to parties having limited interests or prevented from treating or not making title", in which case the money has got to be deposited in the Bank of England in the name of the Court of Chancery (section 69 etc.).

(iii) Where there is a dispute as to the title to receive the compensation or as to the apportionment of it.

4. (*i*) *Party not consenting to receive payment*:—The object[2] of this is to prevent unnecessary prolongation of the proceedings and accumulation of the Collector's liability for interest, when a party wilfully refuses to receive payment. If he has any objection as to the adequacy of the amount, he is given the right to enter protest at the time he receives payment (*vide* the first *proviso*), and when he does this his right to apply for reference is not barred. If in spite of this the party does not take payment, the Collector will deposit the money in the Court, and from that date his liability for interest will cease: see section 34 *post*. There is, however, no express provision in the Act as to how the Court will deal with such a deposit. The deposit being a legal one, the Court gets *seisin* and complete control over the money[3], and it follows that it will order its disposal according to justice, equity and good conscience.

Object of such deposit.

The Court gets control over the deposit.

5. (*ii*) *Incompetency to alienate*:—The Collector's finding as to whether a party has power to alientate the land so as to entitle him to receive payment, is not a judicial finding[4], and cannot be effective. Nevertheless, the Collector has to go into the question to a certain extent so as to enable him to determine whether there is a *prima facie* case for deposit. His position in this respect is fully explained by Mitter J. in the case of *Secy. of State vs. Joynarain Chunder*[5] :—"When he (the

The Collector's position.

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[2] *Vide* para 10 of the Select-Committee's Preliminary Report (2nd. February 1893) and para 8 of their Second Report (23rd March 1893).

[3] *Jugal Kishore vs. Pratap Dei* A. I. R. 1928 All. 289, 113 I. C. 7, 26 All. L. J. 250.

[4] The Collector is not a "Court", vide section 3(c) *ante* and notes thereunder.

[5] (1936) 165 I. C. 716, 63 Cal, 525, 40 C. W. N. 989.

Collector) feels a *bonafied* doubt in the matter (whether the person is entitled to take the money), it is his duty not to take upon himself the task of determining that question himself, for, his adjudication would not be binding on any body, not being adjudication of a Civil Court, but he must act in the way provided for under section 31(2) and send the money to the Court that would have jurisdiction to hear the reference under section 18. Any other view of the provisions of the statute would, in my judgment, lead to serious consequences. Suppose a Collector in a matter of this kind which I have before me, comes to the conclusion that the executor's powers are not limited by the Will and he makes over the money to the executors ; and if in a later adjudication in a Civil Court between the parties interested in the estate of the testator, it be found that their powers are restricted, I do not know what would be the position of the Secy. of State with regard to the money paid by the Collector on his own responsibility to a man, when he ought to have, if the correct position had been appreciated by him, deposited the money in Court under the provisions of section 31(*2*). This consideration alone leads me to construe the word "deposit" as used in section 34 to mean the actual fact of deposit in the place indicated in section 31(*2*). Whether the deposit actually made in such a case by the Collector was by reason of any error of judgment on his part on a matter which has to be judicially determined, does not matter and I do not consider that the Collector would be incurring a liability to pay interests by sending money to the Court in such circumstances."

Incompetency to alienate the land arises from personal incapacity such as lunacy, idiocy, minority. It may arise when a person acts in a representative capacity such as trustee, *sebait* [6], executor, administrator etc. Limited owners such as

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[6] *Ram Prasanna Nandy vs. Secy. of State* (1918). 40 Cal. 895, 19 C. W. N. 65, 22 I. C. 272 : *Kamini Debi vs Promotha Nath Mookerjee* (1911), 39 Cal. 33, 12 C. L. J. 597, 10 I. C. 491 : *Shiva Rao vs. Nagappa,* (1905) 29 Mad. 117.

the holder of Hindu widow's estate [7] or a life-estate holder, are also persons incompetent to alienate the land. A person may be "entitled to act" within the meaning of section 3(*g*) *ante*, but that does not mean that he is competent to alienate the land and receive and give a good discharge for the purchase money on a voluntary sale [vide proviso (iv) to section 3(*g*) *ante*]. The principle underlying is that the land though converted into money is "impressed with the trusts of real estate" [8], so that until the money passes into the hands of a person absolutely entitled thereto, there is a constructive reconversion of it into land [9], see notes under section 32 *post*.

It is for the person who claims payment from the Collector to show to him that he possesses the right to receive such payment [10]. The Collector is also given the power to summon and enforce attendance of witnesses and the production of documents, vide section 14 *ante*. The position of the party is similar to that of a private person selling his property when he has to satisfy the purchaser as to his (vendor's) title to it.

Dispute to be subject of reference under sec. 18 or 30.

6. (iii) *Disputes as to title or apportionment* :—Such "dispute" will either be the subject of an application for reference under section 18, or of a reference under section 30. Under the old Land Acquisition Act (Act X of 1870), the Collector had no power to apportion the amount of compensation when the parties disputed at the time he drew up his award : he was bound to refer the matter to the Civil Court for adjudication under sections 38 and 39 of that Act. The Act of 1894

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[7] *Mrinalini Dasi vs. Abinash Chandra Dutt* (1910) 11 C. L. J. 583, 14 C. W. N. 1024 : *Sheo Prosad vs. Jaleha Kunwar* (1901) 24 All. 189 : *Sheo Ratan vs. Mohri* (1899) 21 All. 354.

[8] In *re. Stewarts Trusts* (1852), 22 L. J. N. S. 369.

[9] *Mrinalini Dasi vs. Abinash Chandra Dutt* (1910) 11 C. L. J. 583, 14 C. W. N. 1024.

[10] The provision in the English Law is more clear : it includes cases of persons "not making title." It is for the person claiming compensation to establish his title : *Secy. of State vs. Satish Chandra Sen* (1931) (P. C.) 57 I. A. 339, 58 Cal. 358, 35 C. W. N. 173, 130 I. C. 616, A. I. R. 1931 Cal. 1.

abolished such compulsory reference [11], and requires the Collector to make an apportionment on the materials and information available to him, even when there is a dispute (section 11), leaving it to the party who felt aggrieved to apply for reference (section 18) within the specified time. A dispute in this sub-section would thus seem to mean an objection raised by an application for reference under section 18, after the Collector has made his award, including disputes for which the Collector would have to make a reference under section 30 [12]. Where therefore there is no application for reference under section 18 within the time specified there-in, or there is no case for a reference under section 30, the Collector need not send the money to the Court [13], but may proceed to make payment according to his apportionment.

What amount to be deposited.

The amount to be deposited in case of dispute as to title or apportionment, would, obviously, be the amount about which the dispute is raised and not the entire amount in a particular award which may include quite un-connected persons or items.

Sub-section (2)—Provisos first and second.

Receiving payment under protest or otherwise —effect of :

7. A person who is dissatisfied with the Collector's award should receive payment under protest. A party who receives payment "otherwise than under protest", cannot object to the sufficiency of the amount" and will not be entitled to make any reference under section 18 *ante*.

[11] *Saibesh Chandra Sarkar vs. Bejoy Chand Mahatap*, A. I. R. 1922 Cal. 4. 65 I. C. 711, 26 C. W. N. 506.

[12] Failure to make a deposit when some of the parties have taken payment from the Collector, does not invalidate a reference or affect the jurisdiction of the Reference Court : *Rahmit vs. Mahadeo*, A. I. R. 1920 Pat. 129, 56 I. C. 125, 1 P. L. T. 143 : *Jogesh Chandra Ray vs. Yakub Ali* (1912) 21 I. C. 111, 17 C. W. N. 1057. The Collector waits for six weeks from the notice under section 12(2) *ante*, and if none of the parties in his proceedings apply for reference within that time, he makes payment : but a new person may come up later within six months from the date of the award. See para 18 of the notes under sec. 18 *ante*.

[13] The exception is when the party does not consent to recieve payment and yet does not apply for reference under section 18 : see para 4 *ante*.

Refers to valuation or apportionment or both?

The meaning of the expression—"sufficiency of the amount" is not clear. Does it refer only to the valuation made by the Collector and not to the apportionment made by him? The Lahore High Court held that a person who accepted without protest payment of the amount apportioned and tendered by the Collector, was not entitled to make any reference under section 18 disputing the apportionment made by the Collector [14].

"Protest" is usually signified by an endorsement such as "under protest" on the counterfoil of the cheque or the receipt taken by the Collector for the payment.

Sub-section (2)—Proviso third.

Scope of the proviso: conflicting decisions.

8. This proviso protects the right of action of a person who is lawfully entitled to the compensation money against the person who has received payment of it from the Collector. As for the scope of the proviso, there have been conflicting decisions. The leading case on the subject is the decision of the Privy Council in *Raja Nilmoni Singh vs. Ram Bandhu Rai* (1881) [15]. That case was decided under the proviso of section 40 of Act X of 1870. But the words in the proviso of that Act and the proviso in the present Act are identical.

Leading case of Raja Nilmoni Singh Deo (1881)

The Judicial Committee observed—"It may often happen and frequently does happen, that the real owners possibly being infants or persons under disability *do not appear and are not dealt with in the first instance*, and therefore a proviso of this sort is necessary for the purpose of enabling the parties who have a real title to the compensation". It followed that the scope of the *proviso* was limited to such persons who were not in a position to

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[14] *Bago vs. Roshan*, A. I. R. 1926 Lah. 321, 92 I. C. 484.

[15] 7 Cal. 388 (P. C.)

appear and were not dealt with during the acquisition proceedings.

Wider scope in Punnabati Devi (1903)

But in a case [16] before the Calcutta High Court in 1903, a wider interpretation was put to the *Proviso*, and it was held that although the party had appeared before the Collector and still did not apply for reference under section 18 against his award, he could maintain a civil suit against the person who had taken payment, because there was no adjudication of the right of the claimants *inter se*. In this view their Lordships relied upon the further observation of the Privy Council in *Nilmoni Singh Deo's* case (ibid) just following the observation quoted above, which was :—"The proviso applies only to persons whose rights have not been adjudicated upon and it has not the effect, which it would certainly not be reasonable to attribute to it, of permitting a person whose claim *has not been adjudicated upon* in the manner pointed out by the Act, to have that claim re-opened and heard in another suit".

View of concurrent jurisdiction of ordinary civil court in the case of Bhandi Singh (1905)

The question came up before the same High Court in 1905 in another case [17], in which the claimant had obtained a reference under section 18, but on the matter coming before the Court in due course, it was struck off on his non-appearance. He then instituted a civil suit on the strength of the third proviso to section 31(*2*), it was held that the party having once availed himself of one course of remedy, viz. reference to the Court under section 18, he could not again ask for an opportunity to litigate the same matter in the ordinary Court. In this case the recognised rule of construction of statutes [18] that in the case of an Act which creates a new jurisdiction, a new procedure, new forms or new remedies, the procedure, forms or remedies there prescribed and *no others* must be followed",—was

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[16] *Punnabati Dai vs. Padmanand Singh*, (1908) 7 C. W. N. 588.

[17] *Bhandi Singh vs. Ramadhin Roy*, 10 C. W. N. 991, 2 C. L J. 859.

[18] *R. vs. Country Court Judge of Essex* (1887) 18 Q. B. D. 704: *Rama Chandra vs. Secy. of State* (1888) 12 Mad. 105.

repeated. But it was observed that this was subject to the provisions in the Act itself, viz. the third proviso, which, taken with the other parts, were interpreted as meaning—"that whereas the objection as to the measurement of the land or the amount of the compensation payable therefor must be determined exclusively by a reference to the Civil Court under section 18 clause (1), a question relating to the persons to whom the compensation is payable or its apportionment among the persons interested may be determined *either* under a reference as contemplated by section 18(*1*), *or* by a suit at the instance of a person who may be lawfully entitled to it as against another who has withdrawn the compensation money either without any right or in excess of his just dues". The effect of this decision was that in a matter of apportionment-dispute, the Reference Court and the ordinary Civil Court had concurrent jurisdiction, but if a party had availed of one of these courses of remedy, he could not again litigate with the other.

The last two views dissented from in Saibesh Chandra Sarkar's case (1921).

The question again came up before the same High Court in the case of *Saibesh Chandra Sarkar vs. Sir Bijoy Chand Mahatap* [19]. All the previous decisions were fully examined, and, disagreeing from the views in the two cases mentioned above, their Lordships held that where a person was a party to the apportionment proceedings before the Collector, he had his only remedy by reference under section 18, and he could not litigate on the matter by a separate suit in the Civil Court. They refused to hold that the Act contemplated concurrent jurisdiction of the two Courts ; and took the view that the *proviso* must be given limited application viz. only to cases where the person was under a disability (as mentioned in the Privy Council case of *Nilmoni Singh*) or was not served with notice of the proceedings before the Collector. The reason why they disagreed from the view taken in *Punnabati's* case, was that in that case it had been overlooked that *Nilmoni Singh's*

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[19] A. I. R. 1922 Cal. 4, 65 I. C. 711, 26 C. W. N. 506.

case was under the old Act of 1870, under which every question of aportionment had to be referred by the Collector to the Court for adjudication, and that the words "has not been adjudicated upon" used by the Judical Committee did not mean a deviation from the substantive view expressed in the previous part of their observation, viz. that the proviso was necessary to meet cases of persons who *did not appear* before the Collector, being unable to do so from their position. Compulsory reference was, however, abolished by the Act of 1894, and it was left to any aggrieved party to apply, if he chose, under section 18 within the time specified therein. The reason for disagreeing from the view taken in *Bhandi Singh's* case was that, as observed by Judicial Committee in the same case of *Nilmoni Singh*, a *proviso* such as that in the section, "is necessary in this as in almost all Acts of a similar character", and did not mean any exception to the established principle of law that where "by an Act of the Legislature powers are given to any person for a public purpose from which an individual may receive injury, if the mode of redressing the injury is pointed out by the Statute, the ordinary jurisdiction of Civil Court is ousted and in the case of injury the party cannot proceed by action" [20]. Their Lordships thus observed :—"It would not be rsasonable to hold that the Legislature having provided a special remedy in the Land Acquisition Court intended to make it optional with a party to apply for a reference under section 18 or to institute a suit in the ordinary Court. The scope of the section would be amply satisfied by holding that it applies to particular persons". They then proceeded to explain what such particular persons might be :— "The Collector under section 9 has to serve notice upon the persons known or believed to be interested in the land. There may be persons who are not known to the Collector and who might not be in possession, and the interests of this class of persons are protected by the proviso to section 31(*2*)."

[20] Referring to *Stevens vs. Jeacocke* (1848) 11 Q. B. 731 : *West vs. Downman* (1880) 14 Ch. Div. 111 : *Rama Chandra vs. Secy. of State* (1888) 12 Mad. 105 : *East Fremantle Corporation vs. Annois* (1902) A. C. 213, P. C. at page 217.

Other decisions.

9. In the case of *Shivamal vs. Ramchandra Bapu* [21], it has been held that where the party had received a notice of apportionment [meaning notice under section 12(2)], he would be bound by the proceedings and cannot bring a suit under this proviso. The position is not altered when the party had disabled himself from availing of the machinery of section 18 by accepting the apportionment made by the Collector [22]. So also no separate suit lies where the party did not press his claim before the Reference Court [23].

Collector not a party.

10. In a suit under this proviso, the Secretary of State is not a necessary or a proper party [24], and the decree is to be enforced against the party who took payment and on whom the liability is placed by the proviso, and not against the Collector [25].

Venue of such separate suit.

11. A separate suit under the third proviso, where it is permissible,—though a suit for recovery of money—has to be instituted in the ordinary Civil Court, an not the Small Causes Court; for, under article 14, Second Schedule of the Provincial Small Causes Court Act IX of 1887, the jurisdiction of such Court does not extend to a suit to recover from a person to whom compensation has been paid under the Land Acquisition Act [26].

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[21] A. I. R 1938 Nag. 322, 147 I. C. 877. Also *Bago vs Roshan*, A. I. R. 1926 Lah. 321, 92 I. C. 484.

[22] *Chhedi Ram vs. Ahmed Shafi*, A. I. R. 1938 Oudh 100, 141 I. C. 674. See also *Bago vs. Roshan*, A. I. R. 1926 Lah. 321, 92 I. C. 484.

[23] *Ranjit Singh vs. Sajjad Ahmad Chowdhury* 22 I. C. 922 : *Hurmut Jan Bibi vs. Padma Lochan* (1885) 12 Cal. 33 : *Mrinalini Dasi vs. Abinash Chandra Dutt* (1910) 14 C. W. N. 1024, 11 C. L. J. 583.

[24] *Murad Khan vs. Abdul Razio* A. I. R. 1936 Pesh. 198, 165 I. C. 924.

[25] *Secy. of State vs. Kuppuswami Chetti* A. I. R. 1924 Mad. 521, 78 I. C. 82 : *Satish Chandra Singha vs. Ananda Gopal Das* (1916) 33 I. C. 253, 20 C. W. N. 816 : *Chettiar Firm vs. Secy. of State* A. I. R. 1938 Rang. 176, 11 Rang. 344. For a contrary view, see *Dy. Collector, Cocanada vs. Maharaja Pittapur* A. I. R. 1926 Mad. 492, 49 Mad. 519.

[26] *Tirupati Raju vs. Vissam Raju* (1896) 20. Mad. 155. Contrary view in *Mussamat Nurbehary vs. Anwar Ali.* 8. P. R. (1888) F. B. and *Gurumukh Singh vs. Ram Narayan*, 5 P. R. (1886).

Moreover, such a suit may involve, not incidentally but necessarily, determination of title to land (e.g. where the compensation money is on account of the value of the land).

It has been held in an old Madras case [27] that it is not necessary that suit to recover compensation-money should be instituted in the Court within the local limits of whose jurisdiction the land acquired is situated. This was based on the view taken in the case that although the right to the money must depend upon the proof of the right of the plaintiff to the land, as mortgagee and purchaser under the decree, such proof would not lead to any determination of any right to immoveable property or interest therein, but will lead to a determination of a right to property which is in fact moveable.

Period of limitation for such separate suit.

12. The period of limitation for the institution of such suit is 6 years under article 120 [28] of Schedule I to the Limitation Act, that is to say article 36 is not applicable, nor article 17 as the suit under this proviso is not against the Government.

Sub-sections (3) and (4)—compensation by other land.

Arrangement by grant of other land etc. instead of a money-compensation.

13. The language of sub-section (4) assumes that the Collector is always competent to enter into any arrangement with the party by giving the latter other land instead of paying him a compensation in money. Where the party is not competent to contract in respect of such arrangement, sub-section (3) gives the Collector the necessary authority. These two sub-sections recognise in one sense, the principle of re-instatement.

14. The methods alternative to payment of a money-compensation are :—

(1) grant of other land in exchange ;

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[27] *Viraraghava vs. Krishnaswami*, (1888) 6 Mad. 844.

[28] *Rai Radha Kishen vs. Nauratan Lal* (1918) 8 Pat. L. J. 522 : *Azroal Singh vs. Lala Gopinath* (1867) 8 W. R. 844. In *Raja Khetra Krishna Mitra vs. Kumar Dinendra Narain Roy*, (1897) 8 C. W. N. 202, the view expressed was that in such suit by a landlord, agent or tenant, Article 62 (8 years) might apply.

or (2) remission of land-revenue on other lands held under the same title ;

or (3) any other way as may seem to be equitable.

Substitute land to be owned by Government :

The arrangement by grant of other land presupposes that the Collector is in a legal position to transfer to the party such other land by way of exchange. Where such other land is owned by Government, there is no difficulty when the acquisition is also for the purpose of a Department of Government ; but even in such case the sanction of the local Government is necessary, and where such sanction was not obtained and the exchange was disputed by a party who had taken settlement of that land, it was held that the exchange was inoperative [20].

— or by the local authority or Company

Where, however, the acquisition is for the purpose of a local authority or a Company, similar procedure can only be adopted if such other land is also owned by such local authority or the Company. When no such other land (viz., Government-land in the case of acquisition for Government, and land belonging to the local authority or Company in the other cases) can be had for exchange, the sub-section would seem to be inoperative. For, to get any land belonging to some other person, would mean a purchase with money, and the sub-section does not contemplate any money-compensation which would be at the disposal of the Collector. For such a position, recourse would have to be had through the Court under section 32, i.e. after the Collector has deposited the money-compensation with the Court under section 31(2). Sub-section (3) does not provide for a substitute procedure for investment by purchase, when a money-compensation has been awarded.

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[20] See *Narayana vs. Ram Chandra* (1890) 13 Mad. 485. This case was however, under the Old Act X of 1870 in which there was no provision for exchange, and further under Regulation II of 1908, the L. A. Officer or the Collector had no authority for disposal of Govt. land in this manner without the sanction of Government.

Investment of money deposited in respect of lands belonging to persons incompetent to alienate.

32. (*1*) If any money shall be deposited in Court under sub-section (*2*) of the last preceding section and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall—

(*a*) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held, or

(*b*) if such purchase cannot be effected forthwith then in such Government or other approved securities as the Court shall think fit ;

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied—

(*i*) in the purchase of such other lands as aforesaid ; or

(*ii*) in payment to any person or persons becoming absolutely entitled thereto.

(*2*) In all cases of moneys deposited to which this section applies the Court shall order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Collector, namely :—

(a) the costs of such investments as aforesaid;

(b) the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being invested and for the payment out of Court of the principal of such moneys, and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

General scope.

This section deals with cases of deposits made on the ground that there is no person who appears to the Collector to be "competent to alienate the land" *vide* section 31(2) *ante*. Cases of deposits for other causes are dealt with in section 33 *post*.

Sub-section (1) deals with three stages of the proceedings before the Court, viz.—

First, determination of the question whether a party had or had not the power to alienate the land;

Second, investment of the compensation-money when it appears to the Court that the party had no power to alienate the land, and payment of interest or other proceeds while the money remains so invested; and

Third, determination of the question whether, by the happening of some event, the party or some person has become absolutely entitled to the compensation-money.

While the money remains invested in Govt. securities during the second stage, question often arises whether any portion of the same might not be sold to meet expenses for a specific purpose, e. g. a legal necessity or religious obligations of a Hindu widow, or for repairs to or improvements upon the property and the like.

The first stage—determination of the question of power to alienate the land.

Court to enquire first as to power to alienate.

2. When the Court receives a deposit made for the reason that there is no one who is competent to alienate the land, the first step for the Court to take is to ascertain whether the Collector's assumption is correct; and then, if "it appears (to the Court) that the land belonged to any person who had no power to alienate", the Court would follow the line of action as indicated in clauses (a) and (b) and the subsequent provisions in the section.

Civil Procedure Code applies for the procedure.

3. No special procedure is indicated in the section for the Court's enquiry to ascertain whether the person to whom the land belonged had or had not the power to alienate the same. The provisions of the Civil Procedure Code would therefore apply so far as they may, and it has been held that the Court's proceedings under this section are judicial. It has been explained in paragraph 5 of the notes under section 31 *ante*, what is meant by "incompetency to alienate", i. e. circumstances like minority or lunacy of the owner, or where the person is in the position of a trustee such as *shebait* of debuttor or other dedicated property, or as *mutwali* of a wakf property. In such cases the real owner is incapable of appearing himself, and the *shebait*, manager or *mutwali* who appears, appears only in a representative capacity *i. e.* as a person only "entitled to act" as defined in section 3(g) *ante*.

Claims either as representative, or as owner.

Where the party does not dispute his representative capacity but still claims payment of the corpus.

4. Where the party so appearing does not dispute such representative capacity, but still claims payment to him of the *corpus* of the compensation-money, the point for determination would be whether in that capacity he was "competent to alienate the land and receive and give good discharge for the purchase-money on a voluntary sale", vide proviso (iv) of section 3(g) *ante*: for, as explained

in the notes under that proviso and paragraph 5 of the notes under section 31 *ante*, the compensation-money retains the character of real property though changed in shape. The burden of proving this is on the claimant ; and as the claim would *prima facie* be a claim adverse to the interests of the real owner or beneficiary, the Court would have to be sure that such interests are properly protected. The question of separate representation of such beneficiary or of a *proper* guardian *ad litem* for a minor or lunatic may therefore arise, vide Orders 31 and 32 of the Civil Procedure Code.

If it appears to the Court that the person was so competent, clauses (a) and (b) would have no application, and the Court would direct payment of the compensation money to him.

5. As to when a person entitled to act may or may not be treated as a person competent to alienate :—

Lunatic or Idiot :—See the Indian Lunacy Act IV of 1912. A manager appointed by a Court requires special permission of that Court before he can "mortgage, charge or transfer by sale, gift, exchange or otherwise any immovable property", vide sections 47 and 75 of that Act. Without such permission he cannot be considered as competent to alienate and cannot therefore receive payment. When such permission has been obtained, the Reference Court has no jurisdiction to refuse payment [1].

Minors :—When there is a certificated guardian appointed by a Court under Act VIII of 1890, such guardian cannot alienate the minor's property without the permission of the Court appointing him, *vide* section 29 of that Act. He must therefore obtain the permission of that Court before he can take payment of the "corpus" of the compensation money.

The question about the position of the Court of Wards [2] arises when it is in charge of the property of a lunatic or a minor.

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[1] *Satyendra Nath Dey vs. Secy. of State* (1916) 20 C. W. N. 975.

[2] "The Court of Wards (representing a minor) had no power to alienate" *Luchmiswar Singh vs. Chairman, Darbhanga Municipality* (1890) 18 Cal. 99, 17 I. A. 90.

Executor or Administrator :—The powers of an executor to alienate depend on the terms of the Will. The position of the administrator is different. See section 307 of Indian Succession Act (Act XXXIX of 1925).

A Shebait or a Mutwalli of a dedicated property, has no power to alienate [3]. He is entitled only to possess and to manage the dedicated property.

Charitable Institutions :—These also come generally in the same category as dedicated property ; but the question as to power to alienate will depend on the terms of the Articles of Association. Under section 5 of Act XXI of 1860, the property vests in the Trustees or in the Governing Body [4].

Receivers appointed by the Court :—Their powers depend on the terms of the Court's order under Order 40, rule 1 of the Civil Procedure Code. "The receiver is appointed for the benefit of all concerned ; he is the representative of the Court of all parties interested in the litigation wherein he is appointed". So it has been held [5] by the Calcutta High Court that possession of the compensation money by the receiver is possession by the Court appointing the receiver as it will remain in *custodia legis*. In the case of *Adhar Kumar Mitra vs. Sree Sree Radha Madan Mohan Jiu* [6] in which there was a receiver appointed for the administration of the Debuttar property, it was held "the receiver represents not only the Shebaits but the Thakur as a juridical person, represented by the receiver appears to be competent to alienate the land". So that, the receiver was absolutely entitled to the compensation money.

[3] *Kamini Debi vs. Pramath Nath Mukerji* (1911) 39 Cal. 33, 10 I.C. 491, 18 C. L. J. 59 : *Rama Prasanna Nandi vs. Secy. of State* (1912) 40 Cal. 895, 19 C. W. N. 652, 22 I. C. 272.

[4] *Shiva Rao vs. Nagappa* (1905) 29 Mad. 117.

[5] In re : *K. C. Banerjee*, A. I. R. 1928 Cal. 402, 107 I. C. 788. See also *Administrator-General vs. Prem Lall* (1895) 22 Cal. 1011, 22 I. A. 208 : *Dwijendra vs. Joges* (1924) 39 C. L. J. 40, 1924 A. C. 6C0.

[6] (1932) 36 C. W. N. 870, A. I. R. 1932 Cal. 660, 139 I. C. 180.

Karta of a joint family.

Allied to the above comes the case of the Karta (manager) of a Mitakshara joint family. The general law is that the manager (karta) of a joint family can alienate joint family property for a legal necessity or for the benefit of the estate. But as regards the position in land-acquisition, in the case of *Dindayal Shah vs. Ram Babu* [7], it has been held that the Karta of a joint family governed by the Mitakshara law represents the joint family and as such is entitled to receive payment of the compensation money in respect of the joint family property. Karta of a Hindu joint family is competent to alienate the property and so to withdraw the compensation money [8].

Hindu Widow's Estate :—Section 32 applies to the case of the acquisition of lands held by a qualified owner in the position of a Hindu widow. A Hindu widow holding the widow's estate has no power of alienation within the meaning of this section [9]. "The legislature intended that the protection enjoyed by the reversionary heirs when land is in the hands of limited owners should not by reason of the acquisition alone, be completely withdrawn. The object would be defeated if upon the conversion of the land into money the limited owner was allowed to seize the fund and to deal with it as absolute owner." [10]

The second stage—investment of the money.

Investment by Court—when party incompetent to alienate.

6. When on enquiry as indicated in the preceding paragraphs, it appears to the Court that the party had power to alienate, it shall direct that the money be paid to him forthwith. When it appears to it that the party had no power to alienate the land, the Court is required to take

[7] (1928) 32 C. W. N. 815, 115 I. C. 363.

[8] *Daya Chand vs. Bhim Singh*, A. I. R. 1929 Cal. 379, 118 I. C. 851.

[9] *Sheo Ratan vs. Mohri* (1899) 21 All. 354 : *Sheo Prasad vs. Jaleha* (1901) 24 All. 189 : See also *Mahammad Ali vs. Ahammad Ali* (1902) 26 Mad. 289, which related to the acquisition of property owned by a Muhamedan family governed by the Marumakatyan law.

[10] *Mrinalini Dasi vs. Abinash Chandra Dutt* (1910) 14 C. W. N. 1024 at 1029.

action for investment in the manner laid down in clauses (a) and (b).

General plan as regards investment.

7. Clause (a) requires that the money shall be invested in the purchase of some other lands : and it is only when this cannot be effected forthwith, that it should be invested in Government or other approved securities, vide clause (b). And when Government or other approved securities are purchased, the same may be resold later either for the purchase of other lands or in payment to the party when he (e. g. a minor attaining majority) becomes absolutely entitled thereto.

One clear object is that the money must not be kept as idle capital longer than what is absolutely necessary. If some other land cannot be had forthwith, it must be invested in Government or other approved securities.

Sub-clause (ii) indicates that the money once invested in Government or other securities, need not necessarily be re-invested in purchase of other lands. Where the disability which prevents payment of the *corpus* of the deposit, is of a temporary nature, e. g. minority, it may just as well be that this is kept in Government securities till the party attains majority. Similarly in the case of a Hindu widow or similar person, when after lapse of some time, other persons (reversioners) would be absolutely entitled to the corpus.

Taking all the provisions together it would seem that the intention is that where there is a permanent disability, e. g. when the property is public *debuttar* and the like, the money should, as soon as possible, be reconverted to real property *in fact*, by purchase of other lands.

Collector not indifferent as he has to bear costs.

8. From the above plain reading of the section as it is worded, judicial decisions on various questions arising from its application in practice, may be followed. But there is one important point which has to be remembered : although the matter of investment is one in which the parties and the Court are only concerned, yet the Collector cannot be kept altogether

indifferent, because under sub-section (2) the costs incurred in effecting the investment in purchase of other lands, and for payment of interests accruing from Government or other securities which may be purchased, have to be borne by the Collector. Hence the Government of India's rule in the Civil Account Code, which runs as below :—

"Investments under sections 32 and 33 of the Act of money deposited in Court should be arranged for, in case of purchase of Govt. securities, in communication between the Court and the Civil Accountant-General concerned, and purchase of land should be effected under the Court's orders through the Collector or other Revenue authority of the Province. The Accountant-General will inform the Court what sums should be remitted to enable him to make the investment, and this amount will be paid from the deposits in Court." Rule 20, App. C, Civil Account Code, Vol. I.

Enquiries as to suitability usually by the Collector, and as to title by the Govt. Pleader.

Usually, the enquiries as to the suitability of the property intended to be purchased, and its fair value, and in particular as to whether there is any collusion between the person appearing as entitled to act (*e. g.* guardian of a minor or lunatic, *shebait* of a *debuttar* property etc.) and the vendor, are made by the Collector under the orders of the Court. Title also is usually examined by the Govt. Pleader [11] on scales of fee fixed by the Collector or by Government. This procedure regulates the burden of the costs which falls on Government, and at the same time ensures a dependable basis on which the Court can proceed.

9. The report of the Collector is not, however, final or conclusive : it is open to the party to whom the land acquired

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[11] In a Calcutta case it has been held that where the Court has approved of the employment of a particular solicitor to investigate title and carry through the transaction, the taxed charges for the solicitor would be borne by the Collector : *Charan Manjuri Dasi vs. L. A. Collector*, A. I. R. 1935 Cal. 119, 39 C. W. N. 251.

The Collector has the necessary staff to do the work.

belonged, to object ; and the Court would hear such objection and any expert, the objector may call, and then come to a judicial finding as to the propriety of the purchase and the value of the land and title [12]. The person whose land is sought to be purchased or who has offered his land for sale, is, however, no party to the proceedings and action taken by the Court in hearing such a person or employing a valuer at the instance of such person is irregular [13].

Party may object to the Collector's report.

The same observations apply as regards the report of the Government Pleader or any other legal expert who may be employed by the Court or the Collector to investigate the title [14] of the land proposed to be purchased, as it is for the Court to be satisfied that the title is good and marketable.

So also as, regards title.

10. For the investment of the compensation-money in purchase of other landed property, the usual procedure is for the party (*i. e.* the person to whom the land acquired belonged or his representative viz. the person "entitled to act" for him), to find out some other suitable land and arrange for a provisional price, subject to approval by the Court, and then apply to the Court : and the Court thereupon makes the enquiries as to suitability, price and title as indicated in the previous paragraph. Section 70 of the English Lands Clauses Consolidation Act, 1845, is clear on the point that the Court would move for such purchase only "on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited," and until then the money shall be invested (through the Accountant-General) in

Selection of other lands.

Application from the party necessary under the English law :

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[12] *Narayanan Nambudri vs. Sub-Collector and L. A. Officer, Malapuram* A. I. R. 1937 Mad. 948.

[13] *Nawab Bahadur of Murshidabad vs. Kumar Dinendra Mullik* A. I. R. 1932 Cal. 844, 59 Cal. 1272, 140 I. C. 866, 36 C. W. N. 848.

[14] *Narayanan vs. Sub-Collector and L. A. Officer, Malappuram.*

the purchase of "Bank annuities or in Government or real securities." Section 32 of the Indian Land Acquisition Act, however, does not contain any such clear provision that the Court would not proceed to the purchase of other lands until there was a petition from such party. It was argued in a case before the Calcutta High Court [15], that the provisions in the Indian Land Acquisition Act in this respect should be taken broadly as analogous to those in the English Act: but the Court held that "it was difficult in the absence of an express provision in the statute to accede to this contention." In other words, in India, there was no bar to the Court's acting on its own information or on offers of sale from owners of other properties, although the party on whose account the money is in deposit (or already invested in Govt. securities) does not move the Court. The Calcutta High Court has held that the Court has this discretionary power [16], but has discouraged [17] such procedure as involving unnecessary trouble and expense (and sometime litigation) to the party. When, therefore, the party to whom the acquired land belonged, or his representative "entitled to act"

-but not under the Indian Law

Action by the Court on offer of outsider discouraged : Difficulties.

[15] *Sarala Debi vs. President, Calcutta Improvement Tribunal* A. I. R. 1935 Cal. 248, 155 I. C. 999, 39 C. W. N. 169.

[16] *Nawab Bahadur of Murshidabad vs. Kumar Dinendra Mullick*, 36 C. W. N. 848 : *Sarala Dasee vs. President, Calcutta Improvement Tribunal*, 62 Cal. 154 : *Adhar Kumar Mitra vs. Sri Sri Radha Madan Mohan Jiu* A. I. R. 1932 Cal. 660, 139 I. C. 180, 36 C. W. N. 370.

[17] *Sarala Debi vs. President, Calcutta Improvement Tribunal*, 39 C.W.N. 169. Apart from the fact that the procedure implies a kind of compulsion on the party at the instance of an outsider who is interested in having his own property sold at an advantage, there is the practical difficulty of binding the latter, if he chooses to resile. Moreover, there is also the question of expenses for the preliminary investigation as to the suitability of the property for sale. This has been met to a certain extent (in Calcutta) by demanding a deposit for these expenses from such person : but still there remain the trouble and expenses of the party whose money was deposited if he objects.

[*vide* section 3(g) *ante*], or a reversioner (immediate or presumptive) whose interest is affected, objects to such proposal, that objection is an important matter for the Court to consider, and the Court would not be exercising its discretion properly if it ignores it.[18]

Such outsider cannot be heard or be a party in the proceedings.

11. From the language of sub-clauses (i) and (ii) it has been held that purchase of some other lands was not mandatory when once the money has been invested in the purchase of Government securities[19]. It was also held in this case that when—"neither the lady (having widow's estate), nor the reversioners (the daughter's sons) have applied for a re-investment", the Court could not be said to have been "exercising proper discretion in directing these (the Government securities) to be invested in land", and also that the Court's action of issuing notice on the limited owner to show cause why the money invested in Government Promissory Notes under clause (b), should not be re-invested in purchase of land, was improper as based on "assumption of jurisdiction under a wrong view of the law."

Re-investment —(purchase of land after purchase of Govt. securities)—is not mandatory

-and the Court should not force the party.

12. Where the party with a limited interest (e. g. a Hindu widow) moves the Court for application of the deposited money or the Government securities, for purchase of other lands, the reversioners or the beneficiaries affected may object, and it will be for the Court to hear and decide such objection[20].

When limited owner applies reversioners and other persons affected may object.

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[18] *Nawab Bahadur of Murshidabad vs. Kumar Dinendra Mullick*, 36 C. W. N. 848.

[19] *Sarala Debi vs. President Calcutta Improvement Tribunal*, 39 C.W.N. 169.

[20] *Sarala Dassi vs. President, Calcutta Improvement Tribunal*, 62 Cal. 154, A. I. R. 1925 Cal. 29, 154 I. C. 773.

Other purposes on which deposited money can be applied : English Law.

13. Two modes of application of the money held in deposit under this section are provided :—(i) purchase of other lands, or (ii) purchase of Government or other approved securities. Under the English Law, several other kinds of application are specially mentioned, viz. (1) purchase or redemption of the land tax, or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts or purposes ; (2) Removing or replacing buildings or substituting others in their stead in such manner as the Court shall direct, if the money in deposit has been in respect of any buildings acquired (vide section 69 of Lands Clauses Consolidation Act, 1845).

Indian Law

14. The provisions in the Land Acquisition Act of 1894, are not so elaborate or clear. From a plain reading of sub-clauses (i) and (ii) of clause (b), it would seem that the only circumstance under which a claimant may take payment of the corpus of the compensation money, except for purchasing other lands, is when he proves that he has, by the happening of some events (e. g. attainment of majority by a minor), "become absolutely entitled thereto". In the case of *Kamini Devi vs. Promotha Nath Mukerji* [21], the Calcutta High Court observed (per Mookerjee J.) that a limited owner such as a *shebait,* even if he be competent to apply the fund when placed at his disposal, for the purpose of the endowment (e. g. improvement and repairs of the unacquired part of the *debuttar* lands, as was claimed in the case), he can only use it for that purpose, and he cannot thus be properly described as a person absolutely entitled thereto. But it was held that "it would not be right to place such a construction upon the provisions of the Land Acquisition Act as would paralyse the management of the endowment". It was further observed that "the cardinal principle is that the endowment is not to be prejudiced by

[21] (1911) 39 Cal. 33, 10 I. C. 491, 18 C. L. J. 597.

reason of the transformation of the land into money", and that "prejudice may result, not only if the fund placed absolutely at the disposal of the *shebait*, is misapplied by him, but also if the fund, treated as unalterably invested, is placed permanently beyond the reach of the *shebait* who can under no circumstances avail himself of a portion of it to meet the most urgent and paramount needs of the endowment".

The view taken in English cases on the corresponding provision in the Lands Clauses Consolidation Act 1845, was accordingly followed, and it was held that "if it is proved that the *debuttar* properties need repairs and improvements, such as cannot be effected out of the current income, the *shebait* should be called upon to submit an estimate of the cost", and after the Court has been satisfied about the estimate, it may allow the works to be undertaken and "as the work progress, such portion of the fund in deposit as may be needed for the purpose will from time to time be paid to the contractor" who would be engaged to execute them.

In a later case *Re : Ganendra Nath Mullick*,[22] it was held that "having regard to the definition of the expression *land*" the words "purchase of other lands" would include erection of buildings upon another land of the *debuttar* estate, if the Court is satisfied that the money should be so invested.

The position with regard to a Hindu widow's estate is somewhat different. In the case of *Debendra Nath De vs. Tulsimoni Dasi*[23], the High Court observed :—"if the land had not been acquired for public purposes, it would have been open to the widow to alienate the same without the permission of the District Judge". The Court seems to have taken the view that in such contingency (*viz.* existence of "legal necessity", the burden of proving which was on the widow), the widow would be treated as a person entitled to make an absolute alienation, as contemplated in sub-clause (ii). The proposal in the case was to apply a portion of the *corpus* of the compensation money for

[22] (1921) 25 C. W. N. 597, 67 I. C. 18.

[23] (1916) 26 C. L. J. 123.

discharging "a burden which has been imposed upon another portion of the estate of the husband of the lady", and the case was remanded for enquiry as to whether that constituted a "legal necessity" in the case, which would "justify an alienation by the lady". It was held that the application of the fund for discharging the burden, was not 'investment of money in the purchase of other land".

In the case of *Lalit Mohon De vs. H. N. Dutta* [24], it was held that the costs of the solicitor in the proceedings by which the money came to be awarded, were payable out of the compensation money held in deposit under this section.

Purchased land to be held under like title and conditions:—

15. The land to be purchased must be held under "the like title and conditions of ownership" as the land acquired, *vide* clause (a). This means that if the acquired land was *debuttar*, the purchased land would also be *debuttar*, and the *shebait* would hold it on the same conditions as the acquired land. If the acquired land was held by a widow as a widow's estate, the purchased land would also be so held by her. The compensation-money in such cases is "impressed with the character of real estate". "The position of the parties is by legal fiction deemed to be the same as if the land had never been converted into money; their rights and obligations are not affected by the transformation." [25]

mentioned in the Deed of purchase.

Usually this is secured by clear mention of the words "to be held under the like title and conditions of ownership" in the deed of purchase: but even otherwise when the recitals in the deed explain the circumstances under which the land is purchased, viz. by way of investment under section 32 of the Land Acquisition Act, the legal consequences as specified in the section would follow. This does not affect the vendor, for he parts with his entire right title and interest in the property.

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[24] 65 I. C. 209.

[25] *Kamini Debi vs. Promotho*, 18 C. L. J. 597 at 606.

16. *Purchase of securities under clause (b)*:—According to the Government of India's resolution contained in the Civil Account Code (quoted in para 13 *ante*), this has to be effected through the Accountant-General when Govt. Securities are purchased. So long as the money remains invested in Govt. or other approved securities, the Court has to pay from time to time, the interest or other proceeds from the investment, to the person or persons who would for the time being have been entitled to the possession of the said land, that is to say assuming that it was not so acquired. The same intention runs throughout, viz. that the compensation-money, even when kept in such investments, retains the character of real property though changed in shape.

The third stage—determination of the question whether any person has become absolutely entitled to the money.

Ultimate destination of securities.

17. *Sub-clause* (ii)—contemplates the ultimate destination of the money kept invested in Government or other approved securities. When by the happening of some event the party or any person becomes absolutely entitled to the money (e. g. when a minor attains majority or a widow dies and the reversioners having power of alienation come in) the Court is to pay the money to such party or person. The payment is made by endorsement on the securities or in cash by selling them.

18. It follows that when there is an application for such payment (technically called "payment out"), the Court will have to investigate and satisfy itself that the applicant has become so entitled to the money. In *Kamini vs. Promotho* [26] it has been observed (per Mookherjee J.) that "under section 32, the fund is placed in the custody of the Court, jurisdiction is by implication conferred upon the Court to deal with questions that

[26] (1911) 13 C. L. J. 597 at 609. See also *Mrinalini vs. Abinash* (1910) 11 C. L. J. 588, 14 C. W. N. 1024.

may arise as to the application of the fund in its custody". His Lordship further observed—"The Land Acquisition Judge has obviously jurisdiction to make an enquiry when a claim to the fund is put forward by a person who asserts that he has become absolutely entitled thereto, or when it is suggested that suitable land is available for the purchase of which the fund may be applied." This view is also followed in a later case [27] where it is observed—"As the fund is in the custody of the Special Judge, he is competent to deal with the question of its application. There is no controversy that the Special Judge is competent to apply the fund in the purchase of other lands or in payment to a person who has become absolutely entitled thereto. Such authority however implies a power to make enquiry." It will thus appear that no Succession Certificate is necessary for receiving payment of money held under section 32 by a person who has become absolutely entitled to it, as the Special Judge is competent to make enquiry and to decide the question of the application of the fund placed in his custody. This matter came up before the Calcutta High Court in a Full Bench case, but no decision was given as it was held that it did not directly arise in the said suit. In that case [28] Rankin C. J. observed that the objector was not in any way damnified by the grant of the Succession Certificate. "He is entitled to object before the Land Acquisition Judge to any order for payment out of the compensation money upon any ground which he can establish showing that the money was not due to the deceased but the money which in the events that have happened, is payable to him".

Costs of investment to be borne by the Collector.

19. *Sub-section (2)* :—provides that costs on account of investments as provided for in clauses (a) and (b) of sub-section (1), and costs and reasonable charges incidental thereto shall be borne by the Collector. These provisions are based on section 80 of the Lands Clauses Consolidation Act, 1845 and the

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[27] *Debendra Nath De vs. Tulsimoni Dasi* (1916) 26 C. L. J. 123 at 125.

[28] *Brojendra Sundar Banerjee vs. Niladrinath Mukerjee*, (1929) 33 C. W. N. 1177 at 1187.

same words have been used. It is to be noted that the liability of the Collector arises only when there is investment under this section, but not in cases of investments of deposits for other causes. For these latter the Collector is not concerned, *vide* section 33 *post*.

Analysis of clauses (a) and (b):—

20. Clause (a) first provides for the costs of the investment: and this investment may be *either* in the purchase of some other lands, *or* in the purchase of Government or other approved securities. In the former case the matter is closed as soon as the purchase of the land has been effected. In the latter case, the investment is only an *interim* measure: for, it may be followed either by purchase of some other land, or by payment out of the principal to the party who becomes absolutely entitled thereto [sub-clause (ii) of sub-section (1)]: and in the meantime, the party who has been receiving the rents and profits, would have to be paid the interest accruing on the Government or other approved securities; and before the principal can be paid out, the party will have to prove that he has become absolutely entitled to get the corpus. Clause (b) provides that the costs and expenses for obtaining the orders of the Court in both these circumstances would have to be borne by the Collector. The general principle is that the costs and expenses which the party would not have to bear but for the necessity of such investment, must be borne by the promoters.

—the general principle.

Costs as are the purchaser's costs borne by the Collector:

—not for abortive proposals.

21. So, in the case of purchase of other land, costs which in the case of a private conveyance would be the purchaser's costs, would have to be borne by the Collector. This would primarily include the costs of investigation as to the suitability of the property and its proper price, besides the stamp-duty and registration fee. But when the Court does not sanction the proposed purchase or the proposal becomes abortive for any other reason, the Collector would not pay the

expenses [29]; and in such case the costs are ordinarily paid out of the money in deposit.

Costs of Lawyer or Solicitor.

22. The examination of title and the preparation of Conveyance and incidental acts for its execution, are usually entrusted to the Government Pleader, and he is paid at certain scales fixed by the Collector or the Local Government. But where in special circumstances the Court approves the employment of a Solicitor, his usual charges would be borne by the Collector [30].

Costs in purchases partly with compensation money and partly with other money.

23. Where the purchase of the property is made partly with the compensation-money, and partly with other moneys provided by the applicant, the principle of English law is that the promoters will pay the whole costs of the investment except so far as they are increased by reason of the purchase-money exceeding the money in deposit [31].

Brokerage

24. Purchase of Government securities is effected through the Accountant-General. Brokerage [32] would be a proper charge on the Collector.

25. As regards the question whether an appeal lies against an order under this section, see notes under section 54 *post*.

Investment of money deposited in other cases

33. When any money shall have been deposited in Court under this Act for any cause other than that mentioned in the last preceding section, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may direct

[29] See the case of *Re : Macdonald's Trusts of the Will* (1860) 2 L.T. 168.

[30] *Charan Manjuri Dasi vs. L.A. Collector*, A. I. R. 1935 Cal. 119, 39 C. W. N. 251.

[31] *Re :Lynn and Fakenham Ry. Act* (1909) 100 L. T. 482.

[32] See *Re : Magdalen College* (1901) 2 Ch. 786.

the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

The language of this section is borrowed from section 74 of the Lands Clauses Consolidation Act of 1845, which, however, relates only to leases for a life or lives or years and the like.

2. Cases of deposits where there is "no person competent to alienate the land" have been dealt with in section 32. This section relates to deposits "for any other causes", and such other cause is, either—(1) if the parties do not consent to receive the money, or—(2) if there be any dispute as to title or apportionment, *vide* section 31(*2*).

3. Cases where the parties do not consent to receive the money, though there is no dispute, are rare in Indian conditions, if any ever arises at all.

4. In cases of dispute, the disposal of the corpus will necessarily await the adjudication of the dispute which would be the subject-matter in a reference under section 18 or 30. This section provides for investment of the money, pending such adjudication : but the investment can be made only in the purchase of Government or other approved securities, and not in the purchase of other lands [compare section 32(*1*) (*a*)]. The Court will not, however, make such investment *suo motu* [compare section 32(*1*) (*b*)], but an application of any party interested or claiming an interest in the money is needed. Further, the investment is in the discretion of the Court (the word used is "may").

5. Where the money has been so invested, the section lays down how the interest and other proceeds from the investment may be paid by the Court to the parties. Whoever be the person on whose application the investment is made, the accumulated interest would be divided amongst the parties in such

manner as would give them the same benefit therefrom as they might have had from the land or as near thereto as may be.

Payment of interest.

34. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of six per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

General principle.

The party is deprived of his profit or usufruct from the date he loses possession, and it follows that if the Collector has not made payment before he takes possession, the party should be entitled to interest from that date [1]. The principle is the same as in a contract for sale and purchase of land,—the purchaser is to pay interest on the unpaid purchase-money from the date of the possession [2].

Deposit in Court equivalent to payment.

2. The expression "paid or deposited" refers to payment by the Collector or deposit by him in the Court, as provided in sub-sections (1) and (2) of section 31. Section 34 lays down that "deposit" in the Court by the Collector is equivalent to "payment" so far as he is concerned ; and his liability for interest ceases from the date on which deposit is made. The interest is payable for the period from the date of possession to the date of payment or deposit [3]. The fact that the Collector has made a deposit on account of an error of judgment, does not matter ; and so, when he had made a deposit because he felt a *bona fide* doubt as to the power of the claimant to alienate, he did not

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[1] *Rev. Divisional officer, Trichinopoly vs. Venkatarama*, 59 Mad. 488, A. I. R. 1936 Mad. 199, 160 I. C. 967.

[2] *Inglewood Pulp and Paper Co. vs. New Brunswick Electric Power Commissioner*, 11 I. C. 261, A. I. R. 1928 P. C. 287.

[3] *Kriparam vs. Secy. of State* 106 I. C. 908.

incur any liability for interest after that date [4], although the claimant was eventually held by the Court to have such power. The deposit must, however, be made in the Court; and a deposit made by the Collector (or the Company) into the Treasury is not sufficient for the purposes of the Act [5].

"Amount" includes the statutory allowance.

3. This section deals with interest on the amount awarded by the Collector, and this amount includes the statutory allowance of 15 per cent under section 23 (*2*) [6]. As regards the question of interest on the amount by which the Collector's award is enhanced by the Court, see section 28 *ante* and the notes thereunder.

The mere existence of an agreement between the parties that the claimant will take away the materials on the land will not absolve the Collector of his liability to pay interest under this section, unless by the agreement the claimant relinquishes his right to receive interest under the law [7].

Possession under section 17.

4. Usually, possession is not taken till after payment or deposit, except in cases of urgency, vide section 17 *ante*. In such cases, the interest payable under this section is included by the Collector in his award.

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[4] *Secy. of State vs. Joy Narain Chunder*, 165 I. C. 716, 40 C. W. N. 989, A. I. R. 1936 Cal. 525.

[5] *Parmanand vs. Secy of State*, 106 I. C. 909.

[6] *Nilkanth vs. Collector of Thana*, 22 Bom. 802.

[7] *Secy. of State vs. Sital Prasad*, 175 I. C. 1007, A. I. R. 1938 Pat. 266.

PART VI.

Temporary occupation of land.

The provisions of Part VI (sections 35 to 37) are intended for cases in which the land is required only for a short period not exceeding 3 years, and it is not considered desirable to go into the expense of a permanent acquisition in the ordinary way. Such occasion generally arises for Railways, and corresponding provisions are contained in sections 30 to 40 of the (English) Railways Clauses Consolidation Act of 1845. For emergent cases arising from a slip or other accident happening or being apprehended, special powers are given to the Railway authorities in India, to enter upon adjoining lands for the purpose of repair or prevention, by section 9 of the Indian Railways Act IX of 1890; and section 10 of that Act provides for payment of compensation by the Railway administration.

2. The provisions for temporary occupation in these sections are confined only to waste and arable lands, and do not apply to houses, manufactories etc. The Collector will ordinarily proceed on agreement with the parties suffering damage, failing which he will refer the question of amount to the Court by a "reference". On the expiry of the temporary occupation, the land is to be returned to the parties from whom it was taken, and if any permanent injury has been done to it during the period of occupation, a further compensation for the damage so caused is to be paid. In case of the parties not agreeing, the matter is to be referred to the Court.

Temporary occupation of waste or arable land. Procedure when difference as to compensation exists.

35. (*1*) Subject to the provisions of Part VII of this Act, whenever it appears to the Local Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the Local Government may direct the Collector to procure the occupation and use of the same for

such term as it shall think fit, not exceeding three years from the commencement of such occupation.

(*2*) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments as shall be agreed upon in writing between him and such persons respectively.

(*3*) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court.

Subject to the provisions of Chapter VII :—These words mean that when temporary occupation is needed for a "Company", the whole of the procedure in sections 38 to 44 have to be gone into, including the enquiry required by section 40, the agreement under section 41 and its publication.

Temporary occupation—only for waste or arable land.

Conditions :—Only waste and arable land can be dealt with for temporary occupation, and the period must not exceed 3 years. Under section 32 of the (English) Railways Clauses Consolidation Act, 1845 there is the further qualification that land must not be more than 200 yards from the centre line of the Railway and must "not be a garden, orchard, or plantation attached or belonging to a house, nor a park, planted walk, avenue, or ground ornamentally planted".

No formal notification required.

In procuring the occupation of such land no notification under sec. 4 or declaration under section 6 is necessary. Under sub-section (2), the Collector will, on receipt of an order of Government under sub-section (1), issue notices to the persons interested.

Determination of the amount of compensation :—The intention is to settle this as far as possible by agreement with the parties. No principles for the assessment of such compensation are indicated in the Act. The matters for compensation, as laid down in section 43 of the (English) Railways Clauses Consolidation Act of 1845, may be summarised thus :—

Principles for compensation.

(1) Value of any crop or dressing that may be on the land :

(2) Full compensation for any other damage of a temporary nature :

(3) Pay half-yearly such rent for the occupation as may be agreed or if not agreed fixed by two justices :

(4) On cessation of occupation, compensation for all permanent loss.

The Executive Instructions [1] of the Bengal Government are that "each party should receive the value of that of which he is temporarily deprived". This is explained further thus :—the occupant, who generally will be the cultivator, is to be offered the nett value of the produce of the land (for the period of occupation) or not less than half of the gross produce. Besides this, compensation should always be offered for standing crops which were grown before notice of intending occupation was delivered unless it is possible for the tenant to cut them in a ripe condition. The landlord or rent-receiver would usually continue to receive the full rent from the tenant or an arrangement may be made for the payment of this rent, and he would then be entitled to no additional payment.

Sub-section (3) :—The difference between this and section 18 is that the Collector here is bound to refer to the Court, and not leave it to the option of the party to apply.

Collector's reference.

[1] See paragraph 91 of the Bengal Land Acquisition Manual, 1917.

36. (*1*) On payment of such compensation, or on executing such agreement or on making a reference under section 35, the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

Power to enter and take possession and compensation on restoration.

(*2*) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein :

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the Local Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

Compensation for unforeseen damage.

Sub-section (*2*)—provides for compensation for any damage not provided for by the agreement under section 35(2). This can only be estimated and assessed after the restoration of possession to the party [1].

Permanent damage.

It is doubtful whether sub-section (2) applies to cases where there has not been an agreement under section 35(2), but the proviso in any case protects the party where the damage during the temporary occupation has been such as to render the land "permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term", in which case the party can demand permanent acquisition.

1. *Secy. of State vs. Abdul Salam Khan* (1915) 37 All. 347, 30 I.C. 245.

37. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court.

Difference as to condition of land.

A Reference under section 37 has reference to the assessment by the Collector under section 36(2), and the Collector *shall* make the reference whether the party disagreeing applies or not. The grounds stated are disagreement as to the condition of the land on the expiry of the term, or any matter connected with the agreement under section 35. It is not clear whether the Court can, on the basis of its finding on these points, enhance the Collector's offer of compensation. If the Court finds that the land has been rendered permanently unfit for use for which it was used before the temporary occupation, and if the party so desire, action will be taken according to the proviso to section 36(2) for permanent acquisition of the land.

Reference for difference obligatory.

Effect of Court's decision.

PART VII.

Acquisition of Land for Companies.

Application of this part.

The provisions in this Part, which comprise sections 38 to 44, apply to cases where the application of this Act is sought by a Company. But where the compensation-money is paid partly out of public revenues or some fund controlled or managed by a local authority, it may not be necessary to apply these provisions: see notes at page 48 *ante*. These provisions do not also apply where the acquisition is for a Railway or other Company for the purposes of which, under any agreement between such Company and the Secretary of State for India in Council, the Government is, or was, bound to provide land: *vide* section 43.

For a history of the development of legislation for acquisition of lands for Companies, see Introduction.

Principle of public purpose-how far essential.

2. The term "Company" is defined in section 3 (e) *ante*. A Company seeking acquisition of land by the application of this Act, may be a charitable or educational institution, or it may be even a profiteering concern. In either case, the basic principle of "salus populi suprema lex," applies, and the essential requirement laid down in section 40 (1) is that the acquisition is needed for a purpose which "is likely to prove useful to the public [1]".

Procedure preliminary to starting of proceedings.

3. The first step to be taken by a "Company" desiring to acquire land, under the Land Acquisition Act, is to apply to the Collector giving particulars of the land it needs and the work which it proposes to do on it, explaining that it is one which will be useful to the public. If, on the report of the Collector, the Local Government is satisfied that the work is *prima facie*

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[1] Clause (a) of section 40 (1), introduced by the Amendment Act 16 of 1933, only embodies a general legislative sanction that erection of dwelling houses for workmen employed by a Company, shall be considered as a proper purpose for which this Act may be applied.

Special legislative sanction is also contained in various Acts relating to Tramways and Electric Supply Companies: see notes at page 47 *ante*.

so, a notification under section 4 including invitation for objections for the purpose of section 5A, would be published ; or, the Local Government may direct that an enquiry should be made according to the special procedure laid down in section 40.

When, after such enquiry, the Local Government is satisfied that the purpose is such for which the Act may be applied, the Company would be required to execute an agreement, stipulating that all costs would be borne by the Company, and amongst other matters, "the terms on which the public shall be entitled to use the work" for which the acquisition is sought, and where the acquisition is for providing dwelling houses for workmen, the manner in which the dwelling houses would be erected and the amenities which would be provided.

When such agreement has been executed, the Company would be required to deposit with the Collector the estimated cost, and a declaration under section 6 would be published. Thereafter, the ordinary procedure in the Act will follow. After the acquisition is completed, and possession taken by the Collector under section 16, a deed is executed between the Government and the Company, conveying the lands to the latter and specifying the terms of the agreement on which the lands would be held by the Company.

Cessation or diversion of purpose for which land acquired.

4. The purpose of acquisition being an essential ingredient, it follows that the Company cannot be permitted to divert the use of the land for some other purpose. The stipulation has to be included both in the agreement and the conveyance, as a condition on which the land shall be held by the Company [section 41 (3)]. The agreement and the conveyance have thus necessarily to include stipulations as to what would happen when the Company fails to execute the work for the purpose of which the acquisition is made, or ceases to work, or attempts to divert the use of the land to some other purpose [2].

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[2] These stipulations are standardised in the Forms of the Agreement and Conveyance, prescribed by the Local Governments. The usual stipulation (as in Bengal) is that on such event, Government would resume land,

Company may be authorised to enter and survey.

38. (*1*) * * * *[3] The Local Government may authorize any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by section 4.

(*2*) In every such case section 4 shall be construed as if for the words "for such purpose" the words "for the purposes of the Company" were substituted; and section 5 shall be construed as if after the words "the officer" the words "of the Company" were inserted.

As for the meaning of "Company" see definition-section 3(e).

Authority to the Company for reconnaissance survey. S. 4.

Section 38 originally did not contemplate notice for objections, but since the change in the procedure due to the insertion of section 5A, by the amending Act of 1921, this notification for authority for a reconnaissance survey may very well, where possible, be incorporated in the same notification inviting objections. That this is now the intention would seem from the corresponding amendment of section 40 by which a separate special enquiry is not required when it is covered by the enquiry under section 5A.

38A. An industrial concern, ordinarily employing not less than one hundred workmen owned by an individual or by an association of individuals

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paying the Company the compensation-money *less* the statutory allowance, but adding the values of buildings etc. erected by the Company : or, sell or permit the Company to sell, the lands in the market. An apparent anomaly arises in case of such sale, for the purchaser would get absolute title, although the Company's rights were restricted to use for a particular purpose. There would not, however, seem to be any legal bar, when Government agrees ; for, the right which Government gets on acquisition is full right free from any conditions : *vide* section 16.

[3] The words "subject to such rules as the Governor-General of India in Council may from time to time prescribe in this behalf" were omitted from sections 38 (1) and 41 by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

and not being a Company, desiring to acquire land for the erection of dwelling houses for workmen employed by the concern or for the provision of amenities directly connected therewith shall, so far as concerns the acquisition of such land, be deemed to be a Company for the purposes of this Part, and the references to Company in sections 5A, 6, 7, 17 and 50 shall be interpreted as references also to such concern.

Industrial concern to be deemed Company for certain purposes.

This section purports to be an expansion of the meaning of "Company", though limited to a particular purpose, viz. housing of labour. It was inserted by the amending Act XVI of 1933 along with the corresponding amendment of clause (a) of section 40(*1*), on the recommendation of the Royal Commission on Labour.

Acquisition for housing of labour.

39. The provisions of sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the Local Government, nor unless the Company shall have executed the agreement herein-after mentioned.

Previous consent of Local Government and execution of agreement necessary.

See general note at the beginning of this Chapter VII. For the exception of certain Railway and other Companies, see sections 43 and 44 *post* [4].

Previous consent of Govt. and agreement necessary : question of financial stability.

Under sections 16 and 17 of the (English) Lands Clauses Consolidation Act, it is necessary that, where the undertaking is intended to be carried into effect by means of a capital to be subscribed by

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[4] See also *Municipal Corporation of Bombay vs. G. I. P. Ry. Co.* (1916) (P. C.) 38 I. C. 928, 41 Bom. 291, 21 C. W. N. 447 in which it has been explained that the powers under section 7 of the Indian Railways Act are not cut down when carrying on a line across a Municipal street.

the promoters, the whole of the capital or estimated sum for defraying the expenses of the undertaking shall be subscribed under contract binding the parties thereto, and that two Justices give a certificate to this effect. There is no such specific requirement under the Indian Act, but the financial stability of the Company would come into consideration when the "agreement" under section 41 is executed, viz. the extent to which the Company is in a position to give effect to the agreement.

Previous enquiry.

40. (*1*) Such consent shall not be given unless the Local Government be satisfied [either on the report of the Collector under section 5A, sub-section (*2*), or][1] by an enquiry held as hereinafter provided,—

(*a*) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or

(*b*) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.

(*2*) Such enquiry shall be held by such officer and at such time and place as the Local Government shall appoint.

(*3*) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure in the case of a Civil Court.

1 The words within bracket were inserted by Act 38 1923.

Sub-section (1) :—Where there has been an objection under section 5-A, the enquiry in connection with it may cover the purpose of the enquiry contemplated in this section, and when it is so, no separate enquiry is necessary. (See general note at the beginning of this Chapter VII).

Special enquiry as to the work being of public utility.

Clauses (a) and (b) of sub-section (1) :—These were inserted by the amending Act XVI of 1933 along with section 38-A.

Clause (b) of sub-section (1) :—The expression used here is "likely to prove useful to the public". This expression is not defined, just as "public purpose" is not defined. The Local Government is the final arbiter in the matter, and a declaration is not to be considered void, merely because the enquiry under this section was conducted in the absence of the owner and without his knowledge [2].

Agreement with Secretary of State in Council.

41. * * *If the Local Government is satisfied [after considering the report, if any, of the Collector under section 5A, sub-section (*2*), or on the report of the officer making an inquiry under section 40] that [the purpose of the proposed acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or that] the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall, * * *(x) require the Company to enter into an agreement with the Secretary of State for India in Council, providing to the satisfaction of the Local Government for the following matters, namely :—

Ezra vs. Secy. of State, 32 Cal. 605, 32 I. A. 93, 9 C. W. N. 454.

(*1*) the payment to Government of the cost of the acquisition ;

(*2*) the transfer, on such payment, of the land to the Company ;

(*3*) the terms on which the land shall be held by the Company ;

[(*4*) where the acquisition is for the purpose of erecting dwelling houses or the provision of amenities connected therewith, the time within which, the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided ; and

(*5*) where the acquisition is for the construction of any other work, the time within which and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work.]

The agreement-terms and conditions.

The portions within brackets, relating to dwelling houses for workmen were inserted by the amendment Act XVI of 1933. The words—"such Officer shall report to the Local Government the result of the enquiry, and", were deleted by the amendment Act XXXVIII of 1923 and in their place the words "after considering......section 40" within brackets, were inserted by the same amendment. The following words at (x) were deleted by the Devolution Act 38 of 1920, viz.—"Subject to such rules as the Governor-General in Council may from time to time prescribe in their behalf."

Among the terms on which the land shall be held by the Company, are included the liability to relinquish the land with structures to Govt. in case the work does not function. Govt. may either retain the property paying the value of the same or paying the value of the structures and the cost of acquisition of the land (less the statutory allowance), or sell the property paying the Company the sale price less the cost of effecting the sale. Another term usually is that the Company cannot divert the purpose to any other work without the previous sanction of Govt. which sanction presumably will not be given unless the new purpose is also justified by the tests in section 40.

Relinquishment—when work fails.

Publication of agreement.

42. Every such agreement shall, as soon as may be after its execution, be published in the Gazette of India, and also in the local official Gazette, and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

Publication of the agreement.

The agreement must be executed and published in the Gazette before a declaration under section 6 can issue, *vide* section 39 *ante*.

Stamp duty.

No stamp-duty is required for the agreement (*vide* sec. 51).

Sections 39 to 42 not to apply where Government bound by agreement to provide land for Companies.

43. The provisions of sections 39 to 42, both inclusive, shall not apply, and the corresponding sections of the Land Acquisition Act, 1870, shall be deemed never to have applied to the acquisition of land for any Railway or other Company, for the purposes of which, under any agreement between such Company and the Secretary of State for India in Council, the Government is, or was, bound to provide land.

Govt. bound to provide land for certain Railways.

The reason for this exception is that there are Railway Companies with regard to which by virtue of agreement with the Secretary of State, Govt. is bound to acquire land required for such Companies. The ordinary procedure in the Act (subject to any special provision in the Indian Railways Act) applies and the land when acquired vests in the Government.

How agreement between Railway Company and Secretary of State may be proved.

44. In the case of the acquisition of land for the purposes of a Railway Company, the existence of such an agreement as is mentioned in section 43 may be proved by the production of a printed copy thereof purporting to be printed by order of Government.

This follows from sections 37 and 81 of the Indian Evidence Act.

PART VIII.

Miscellaneous.

45. (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 4, by the officer therein mentioned, and in the case of any other notice by or by order of the Collector or the Judge.

Service of notices.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court-house, and also in some conspicuous part of the land to be acquired :

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under Part III of the Indian Post Office Act, 1866, and service of it may be proved by the production of the addressee's receipt.

This section provides for the method of service of notices contemplated under this Act. It is similar to that in the Civil Procedure Code (See Order 5, Rules 9 to 30 of the Code). See also section 9(4) *ante.*

2. *Sub-section* (3) :—The expression—"cannot be found" has the same meaning as it has in Order 5, rule 15 of the Civil Procedure Code. Temporary absence of a person to be served with notice is not covered by these words [1]; nor where no attempt is made to find the person. The enquiry as to the whereabouts of the person must not be perfunctory [2].

Where the person cannot be found nor any adult male member, the service may be effected by fixing a copy—(1) on the outer door of the house, or at the Collector's office, or in the Court-house, *and* (2) in some conspicuous part of the land to be acquired. Compare the method of "substituted service" in Order 5 rule 20 of the Civil Procedure Code, which requires fixing a copy upon some conspicuous part of the house in which the person is known to have last resided, in all cases.

Service by registered post.

3. The "proviso" to the section, permits service by registered post. Part III of the Indian Post Office Act, 1866, is now replaced by sections 28 and 29 of the Indian Post Office Act VI of 1898. Where a letter properly directed, "is proved to have been put into the post office, it is presumed that the letter reached its destination at the proper time according to the regular course of business of the post office, and was received by the person to whom it was addressed. That presumption would apply with still greater force to letters which the sender has taken the precaution to register, and is not rebutted but strengthened by the fact that a receipt for the letter is produced signed on behalf of the addressee by some person other than the addressee himself". [3] See section 114 of the Indian Evidence Act. It

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1 *Fazul Rasul vs. Collector of Agra*, (1919) 17 All. L. J. 268, 50 I.C. 70.

2 *Bharam Chand vs. Kanak*, 26 C. W. N. 859, 68 I. C. 901.

3 *Harihar Banerji vs. Ramsashi Roy* (1918) 45 I. A. 222, 23 C. W. N. 77 at 90, following *Gresham House Estate Company vs. Rossa Grande Gold Mining Co.* (1870) W. N. 119.

has been held that it was proper service even when the registered letter containing the notice was returned by the post office as "refused" by the addressee [4].

In the case of a special notice under section 9(3), within the Revenue-District, there is no discretion, but the notice must be sent by registered post to the last known residence, address or place of business, *vide* notes under section 9 *ante*.

Service on joint claimants.

4. A notice which is addressed to all the joint claimants and served on some of them should be regarded as good service as against persons not personally served [5].

Penalty for obstructing acquisition of land.

46. Whoever wilfully obstructs any person in doing any of the acts authorized by section 4 or section 8, or wilfully fills up, destroys, damages or displaces any trench or mark made under section 4, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

Magistrate to enforce surrender.

47. If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police, and such

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[4] *Girish Chandra Ghosh vs. Kishore Mohan Das* (1918) 28 C. W. N. 819, distinguishing *Govinda Chunder Shah vs. Dwarka Nath Patita* (1914) 19 C. W. N. 489.

[5] *Prasanna Kumar Dutt vs. Secy. of State* (1933) 61 Cal. 245, 38 C. W. N. 289, 151 I. C. 160, A. I. R. 1934 Cal. 525. But see *Nitai Dutt vs. Secy. of State* (1928) 8 Pat. 304 where contrary view was held about service only on some of several brothers.

Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

Completion of acquisition not compulsory, but compensation to be awarded when not completed.

48. (*1*) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(*2*) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(*3*) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

Change by the Act of 1894.

Sub-section (*1*) :—Under the Old Act of 1870, the power of withdrawal could be exercised only before the award was filed under section 11; but under the Act of 1894, this power may be exercised even at a later stage namely before possession has been taken under section 16. One difficulty may arise when payment has been made, as is usually the case, after award but before taking of possession; this will involve demanding refund of the money paid. In the absence of any special provision in the Act for such contingency, the legal remedy will be by action in the Civil Court.

2. Where the property has already vested in Government by reason of possession having been taken under section 16, there cannot be any withdrawal after that; and to vest the property in the owner, there must be a written re-conveyance by the Government to the owner [1].

No withdrawal after taking possession.

3. The power of withdrawal lies with the Government whoever the requiring authority [2]. Where a Municipal Board has made an agreement with the owner, but Government subsequently withdraws from the acquisition under this section, the withdrawal is effective, so far as acquisition under the Act, but the agreement is not otherwise void as between the agreeing parties [3]. This section has no application where there is no voluntary withdrawal by the Government, but the proceedings come to an end by reason of a decree declaring the proceedings invalid. In such case, the party is to seek his remedy (namely damages) in the ordinary Civil Courts [4].

Power of withdrawal with Government.

There is nothing in this section which would suggest that it is not open to the acquiring authority to acquire only a portion of the land in respect of which notice under section 9 of the Act has been issued [5].

Where compensation to be paid.

4. *Sub-section (2)*:—Compensation to be paid under this sub-section is for *damage suffered by the* owner, and this damage :—

[1] *Secy. of State vs. Chettiar Firm* A. I. R. 1927 Rang. 14, 90 I. C. 828, 4 Rang. 291 (dissenting from 17 M. L. J. 557, a decision under the old Act of 1870).

[2] *Secy. of State vs. Kamar Ali* 51 I. C. 501, 16 All. L. J. 659.

[3] *Fort Press Company Ltd. vs. Municipal Corporation of the City of Bombay* 44 Bom. 797, 58 I. C. 621, 21 Bom. L. R. 1014.

[4] *Municipal Committee, Nagpur vs. Ratanlal*, A. I. R. 1938 Nag. 169, 177 I. C. 958.

[5] *Secy. of State vs. Mahip Sha,* (1936) 41 C. W. N. 487—This was a case where there was an agreement under section 78 of the Calcutta Improvement Act, 1911, between the owner and the Improvement Trust for exemption from acquisition of a portion of the land.

(*1*) must be in consequence of *the notice* or of any proceedings under this notice, and

(*2*) would include all costs reasonably incurred in the prosecution of the proceedings.

What notice meant.

5. What "notice" is meant in sub-section (2)? The notice is what is called in English Law "notice to treat" which corresponds to notice issued under section 9, and not the notice under section 4(*1*) inviting objections to acquisition for the purpose of section 5A. The word is "notice" and not "notification". In this view a party would not be entitled to any compensation for his expenses between the stage of notice under section 4(*1*) and the notice under section 9.

Reference to Court.

6. *Sub-section* (*3*) :—This means that a party is entitled to apply for reference under section 18 if he is dissatisfied with the amount offered by the Collector.

Acquisition of part of house or building.

49. (*1*). The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desire that the whole of such house, manufactory or building shall be so acquired :

Provided that the owner may, at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired :

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession

of such land until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(*2*) If in the case of any claim under section 23, sub-section (*1*), *thirdly*, by a person interested, on account of the severing of the land to be acquired from his other land the Local Government is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(*3*) In the case last hereinbefore provided for, no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary but the Collector shall without delay furnish a copy of the order of the Local Government to the person interested, and shall thereafter proceed to make his award under section 11.

General Scope.

This section deals with cases in which only a part of a piece of land is required for the purpose for which land is acquired, but it is so situated that if severed from the remaining part, irreparable or heavy damages would be caused to the latter.

Corresponding English law compared.

2. One of this kind of cases is where there is a house, manufactory or other building on the land, a part only of which is required for the purpose of acquisition. If by the taking of a part, there is damage or depreciation in the value of the remaining part,

the owner is entitled to compensation for the severance, vide clauses thirdly and fourthly of section 23(*1*) *ante*. Sub-section (*1*) of section 49 provides that the owner has the option of claiming that the entire house, manufactory or other building should be acquired and paid for. This is similar to the corresponding provision in section 92 of the (English) Lands Clauses Consolidation Act, 1845, which is : "And it be enacted, that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house or other building or manufactory, if such party be willing and able to sell and convey the whole thereof."

3. *Next*, as regards lands not situated in a town or built upon, section 93 of the English Act gives similar right to the owner, when the intended acquisition cuts through and divides his land, if the quantity of land left on either side or both sides be less than half an acre. There is no corresponding provision in the Indian Act, and unless the Local Government directs that the remaining land should also be taken, the owner's only remedy is in compensation under clauses thirdly and fourthly of section 23(*1*). Sub-section (*2*) of section 49, however, provides that where the claim for such compensation is excessive, the Local Government may direct the acquisition of the remaining land also.

4. Section 94 of the (English) Lands Clauses Consolidation Act, gives power to the promoters, under certain circumstances to take the remaining lands when less than half an acre, even though the owner does not want the same to be acquired. There is no corresponding provision [1] in the Indian Act, except so far as similar cases may be covered by sub-section (2).

5. It is to be noted, however, that unlike the provisions in sections 93 and 94 of the (English) Lands Clauses Consolidation

[1] Town Improvement Trusts and Municipalities are sometimes authorised to acquire not only the lands required for the purpose of the actual work of road-making etc. but also adjoining lands as are affected by such work : see para 18 of the notes under section 6 *ante*.

Act the provisions of sub-section (2) of section 49 are not limited in their application only to "lands not being situate in a town or built upon".

6. *Sub-section (1)* :—The first part of this sub-section is the same as section 55 of the old Land Acquisition Act X of 1870. There was no provision in that Act for reference to the Court, and this defect was cured by the addition of the 2nd. proviso in the Act of 1894.

Old Act of 1870.

7. The Collector cannot acquire part of a house, manufactory or other building, if the owner objects to a part only being taken and desires that if acquired, the whole should be acquired. In such case the Collector, if the acquisition is proceeded with, must [2] acquire the entire house, manufactory or other building ; and if the declaration under section 6 already published does not include the whole, a fresh declaration should be obtained from Government and published [3].

Whole must be acquired—fresh declaration necessary.

8. If the Collector be of opinion that the land proposed to be acquired is not part of a house, manufactory or other building, but the owner does not agree to his view, the Collector must stay his proceedings and refer [4] the question to the Court.

Collector must refer to the court if he disagrees as to the land being a part.

9. Does any revision lie in the High Court if the Collector neglects or refuses to make a reference as required by the section ?

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[2] *Saraswati Pathak vs. L. A. Dy. Collector, Champaran* (1917) 39 I. C. 650, 2 Pat. L. J. 204.

[3] *Bhagawan Das Nagindas vs. Special Land Acquisition Officer* (1914) 28 I. C. 489, 17 Bom. L. R. 192. Compare sub-section (3) which relates to a different, though analogous circumstances, where fresh declaration is not required.

[4] This follows from the 2nd proviso which was inserted in the Act of 1894 to set at rest the opposite view taken by Courts under the old Act of 1870, *Taylor vs. Collector of Purneah* (1887) 14 Cal. 428 : *Ramlakshmi vs. Collector of Kistna* (1892) 16 Mad. 321.

In the case of *Krishnadas Roy vs. Collector of Pabna* [5] (1911), the Calcutta High Court held that an order of the Collector refusing to refer to the Court an objection under section 49(1), was subject to revision under section 115 of the Civil Procedure Code. This view was taken on the strength of that Court's previous decisions relating to references under section 18, and on the analogy of those decisions. But, as has been discussed in paragraphs 16 to 20 of the notes under section 18 *ante*, there is diversity of judicial opinion in this respect, and in later cases the Calcutta High Court also has been inclined to the opposite view, viz. that the High Court had no jurisdiction, with the result that unless section 45 of the Specific Relief Act applied, the party was without any remedy from the Courts. The position with regard to refusal to refer under section 49(1) is thus just as unsatisfactory as the position with regard to rejection of applications for reference under section 18. [6]

Does any revision lie to the High Court for Collector's refusal to refer ?

10. The question whether any land is part of a house, manufactory or other building is a question of fact depending on the particular circumstances of each case [7]. The test as stated in the last paragraph of the sub-section is—"Whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building". This enunciation of the test sums up the main considerations on which views taken in decided cases both in England and India are based. According to Eng-

Test of what is part of a house etc.—a question of fact and circumstances in each case.

[5] *Krishna Das vs. Collector of Pabna* (1911) 13 I. C. 470, 16 C. W. N. 827, following *Administrator-General of Bengal vs. L. A. Dy. Collector, 24 Pargannas* (1905) 12 C. W. N. 241 and *British India Steam Navigation Co. vs. Secy. of State* (1910) 38 Cal. 280, 8 I. C. 107, 15 C. W. N. 87, 12 C. L. J. 505.

[6] The order of the Collector refusing to make a reference to the Civil Court under section 49, is not subject to revision of the High Court has been held in *Maung Nyun vs. Collector of Mandalay* 1938 Rang. L. R. 623.

[7] *Nita Ram vs. Secy. of State* (1908) 30 All. 176.

lish decisions, a "house" means more than the mere fabric or the structure: it includes the house, garden, curtilage and all that would pass on the conveyance of a house [8]. Where there are separate buildings in one ambit used for a common purpose, all together would form one house [9]. If the common purpose for all the parts is letting out in offices, the entire would be one house [10]. The position, however, is not affected if one building is used in part as a dwelling house or residence and in part as a shop or inn [11]. On the other hand, where one building with a continuous system of drains and gutters is intended as separate habitations as semi-detached villas, it would be treated as two separate houses [12]. A garden attached to a house for convenient use and occupation of the house is part of the house [13].

English cases—House.

It has also been held that it is immaterial that different parts of what would otherwise be treated as one house, are held under different titles [14]. Where a strip of land is used for vehicular access to the house, the street otherwise giving access being too narrow, it has been held that the land is part of the house [15]. Whether the acquiring body (Company) can lawfully give adequate access to the portion left unacquired by reason of

[8] *Richards vs. Swansea Improvement and Tramways Co.* (1878) 9 Ch. D. 425, 38 L. T. 833, 26 W. R. 764.

[9] *Siegenberg vs. Metropolitan District Rail Co.* (1888) 49 L. T. N. S. 554. Also *St. Thomas's Hospital vs. Charing Cross Rail Co.* (1861) 30 L. J. Ch. 395—case of a hospital constructed in separate blocks but included in one boundary and used for one purpose.

[10] *Greswolde-Williams vs. Newcastle-upon-Tyne Corporation* (1927) W. N. 325.

[11] *Richards vs. Swansea Improvement and Tramways Co.* (1878) 9 Ch. D. 425.

[12] *Harrie vs. South Devon Rail Co.* (1875) 32 L. T. 1.

[13] *Cole vs. West London Rail Co.* (1859) 28 L. J. Ch. 767.

[14] *Siegenberg vs. Metropolitan District Rail Co.* (1888) 49 L. T. N. S. 554.

[15] *Marson vs. London, Chatham and Dover Rail Co.* (1868) 37 L. J. Ch. 483, 8 L. T. 285.

the access being acquired is a matter to be taken into account [16].

A strip of land used by the owner of a house partly for recreation purposes and partly to improve the view, but situated on the opposite side of the road, has been held as not such land as is necessary to the use and enjoyment of the house for the purpose of these provisions [17]. So, where a field opposite a house and separated by a road which had been bought by the owner for the purpose of feeding horses and cows required for the purpose of his establishment, it was held that the field merely served the personal requirements of the particular occupier, and was not necessary to the use and enjoyment of the house itself [18].

Indian cases.

11. Following generally the above principles, it has been held in India, that the court-yard and so much of the land appurtenant to the house as is necessary for the convenient occupation of the house, are parts of the house [19]. So, out-houses situated within the compound of a dwelling house [20] or go-downs for the use of servants. So if a latrine proposed to be acquired could not be provided for in any other part of the premises, but not otherwise [21].

Manufactory.

12. Similarly a "manufactory" has also been held to have a wide meaning including all premises, both land and buildings, which are utilised for the purpose of manufacture. Where the premises is being used mainly for manufacturing, although a portion thereof is used for

[16] *Caledonian Railway Co. vs. Turcan* (1898) A. C. 256. In re *Gouty & M. S. and L. Ry. Co.* (1896) 2 Q. B. 439.

[17] *Fergusson vs. London, Brighton and South Coast Rail Co.* (1863) 33 L. J. Ch. 29, 11 W. R. 1088.

[18] *Steele vs. Midland Rail Co.* (1866) 1 Ch. App. 275.

[19] *Nawab Mumtazud Dowla vs. Secy. of State* 9 O. C. 311.

[20] *Khairati Lal vs. Secy. of State* (1889) 11 All. 378 : *Dalchand Singh vs. Secy. of State* 37 I. C. 11, 43 Cal. 665.

[21] *Secy. of State vs. Narayanaswami Chettiar* (1931) 139 I. C. 422, 55 Mad. 391, A. I. R. 1932 Mad. 55—in this case, it was held that there was ample space at the back where a latrine of similar size could be built without any particular inconvenience.

other purposes [22] or let out to tenants [23], the promoters may be required to take the whole of the premises.

Where a manufacturing is partly worked by water-power and the promoters desire to take the arrangements for the water-power, they may be required to take the whole [24]. In determining whether it is a manufactory or not, regard should be had to the main purpose for which the premises are used [25].

It has been held in India that a well in a mill-compound supplying water for the engine is a part of the manufactory [26].

Burden of proof.

13. The burden of proving that the portion sought to be acquired is not reasonably required for the full and unimpaired use of the house is on the public body seeking to acquire the land [27].

Meaning of "owner"—contradictory volitions of different owners.

14. The meaning of the term "owner" has also been the subject of controversy. A proprietor, sub-proprietor, mortgagee, tenant or sub-tenant, are all, to state generally, "owner" for the purposes of this section and in this sense the term is almost interchangeable with the expression "person interested in the land" [28]. But allowances would obviously have to be made when the tenant is a tenant-at-will or is for such short term that he cannot be allowed to force a permanent acquisition, when the permanent owner did not want it. Similarly there may be complication of interests and contradictory volitions of several co-sharer owners and such cases have to be dealt with on general principles with reference to the particular purpose and provisions of the Act [29].

[22] *Spackman vs. Great Western Rail Co.* (1855) 1 Jur. N. S. 790.

[23] *Brook vs. Manchester etc. Rail Co.* (1895) 2 Ch. 571.

[24] *Furniss vs. Midland Rail Co.* (1868) L. R. 5. Eq. 473.

[25] *Richards vs. Swansea Improvement and Tramways Co.* (1878) 9 Ch. D. 425, 38 L. T. 833.

[26] *Kharshedji vs. Secy. of State* (1868) 5 Bom. H. C. R. 97.

[27] *Nawab Mumtazud Dowla vs. Secy. of State* ibid (19). *Venkataram Naidu vs. Collector of Godavari* 27 Mad. 354.

[28] *Krishnadas Roy vs. Collector of Pabna* (1911) 13 I. C. 470, 16 C. W. N. 827.

[29] *Mati Lal vs. Bai Samrath* 1886 P. J. 241.

15. No special procedure is indicated for the guidance of the Court when dealing with a reference made under this section : and the provisions of the Civil Procedure Code would therefore apply *vide* section 53 *post*.

Procedure :

16. As to the question whether a decision of the Court on such reference is a decree appealable to the High Court or whether it is only an order subject to revision under section 115 of the Civil Procedure Code, judicial decisions [30] till a contrary view has been taken by the Madras High Court in a case [31] of 1931] were to the effect that the decision of the Court was an order subject to revision under section 115, and was not appealable. In the Madras case referred to above, the Privy Council decision in *Ramachandra Rao's* case [32] has been interpreted to mean that—"if any question other than the amount of compensation was decided under the L. A. Act by the Civil Court after reference, the order of the Civil Court amounts to a decree and an appeal lies and the decision would be *res-judicata*" : and on this interpretation an order of the Court under section 49(1) was held to be a decree and as such appealable. But it may be observed that *Ramachandra Rao's* case did not refer to each and every kind of order of the Court other than what may be called an "award". It is first stated by their Lordships that "fixing the amount of the compensation" is what is meant by "award". The Collector, however, has to include "apportionment" in his award (*vide* section 11) but "from the moment when the sum has been deposited in Court under section 31(2), the functions of the award have ceased : and all that is left is a

Whether revision or appeal lies.

[30] *Sarat Chandra Ghosh vs. Secy. of State* (1919) 50 I. C. 732, 46 Cal. 861, 23 C. W. N. 878, distinguishing *Dalchand Singh vs. Secy. of State* (1916) 43 Cal. 665 : *Giles Seddon vs. Deputy Collector, Madras* (1912) 17 I. C. 117 : *Mulraj Khatav vs. Collector of Poona* (1913) 21 I. C. 179, 15 Bom. L. R. 802.

[31] *Secy. of State vs. R. Narayanaswami Chettiar* (1931) 55 Mad. 891, 138 I. C. 426, A. I. R. 1932 Mad. 55.

[32] *Rama Chandra Rao (T. B.) vs. Rama Chandra Rao (A. N. S.)* A. I. R. 1922 P. C. 80, 49 I. A. 129, 67 I. C. 408, 45 Mad. 320, 26 C. W. N. 713.

dispute between the interested people as to the extent of their interests. Such *dispute* forms no part of the award". It was held thus that an adjudication of such a dispute would be appealable. Their Lordships do not seem to have been contemplating matters in which no such dispute was involved : and in this view, the interpretation given in the Madras case would not seem to be free from controversy. See notes under section 54 *post*.

Time for objection or withdrawal.

17. The first proviso to sub-section (1) permits an owner to withdraw his objection to part-acquisition at any time before award. It has been held from this that the owner may make a substantive application for a reference under the section at any time before the award is actually made [33].

Acquisition of whole in lieu of severance.

Entire acquisition when claim for severance is unreasonable or excessive.

18. Sub-sections (2) and (3) deal with the converse position when the owner instead of asking for the entire acquisition, makes an unreasonable or excessive claim for damages on account of severance. The scope of the sub-section is not however limited to "house, manufactory or other building", but extends to ordinary land as well. When the claim on account of damages for severance is un-reasonable or excessive, Government may, instead of requiring the Collector to determine what compensation is reasonable and proper for the severance [clauses thirdly and fourthly of sec. 23(1)], proceed to acquire the entire land, house, manufactory or building. This provision operates as an automatic check on

[33] *Krishna Das Roy vs. L. A. Collector of Pabna* (1911) 16 C. W. N. 827. See also *Secy. of State vs. Narayanaswami Chettiar* (1931) 55 Mad. 891—in which the claim for entire acquisition was made after the award. His Lordship observed, "there is nothing in section 49 requiring the claimant to put forward this particular claim, namely, that the whole house should be acquired, at any particular stage of the proceedings".

unreasonable or excessive claim by the owner on the ground of "severance".

19. Sub-section (3) definitely provides that no fresh declaration under section 6 is necessary when, for the reason of the party's claim for severance being unreasonable or excessive, the entire land or house etc. is acquired. An order of the local Government is sufficient authority for the Collector to act. Compare the procedure in cases under sub-section (1), vide paragraph 2 *ante*.

No fresh declaration necessary.

50. (*1*) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Company, the charges of and incidental to such acquisition shall be defrayed from or by such fund or Company.

Acquisition of land at cost of a local authority or Company.

(*2*) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation :

Provided that no such local authority or Company shall be entitled to demand a reference under section 18.

Where land is acquired for a Department of Government, all costs are, of course, borne by Government, i.e. from public revenues. So also where land is acquired for a Railway Company and where under any agreement between such Company and the Secretary of State for India, the Government is or was bound to provide land. But where land is acquired for a local authority (which for this purpose includes Improvement Trusts, Port Trusts etc. by reason of special provisions

Local authority or Company to bear all costs.

in the Acts constituting such bodies, vide pages 46—47 *ante*) or for a Company (which includes societies maintained by private funds), all costs would be borne by such authority or Company [1]. Sub-section (1) makes this legal liability clear.

Local authority or Company may appear and cross—examine.

2. *Sub-section (2)* :—A local authority or Company at whose costs the land is acquired may appear and adduce evidence before the Collector or before the Court: but they cannot object or demand a reference against the Collector's award, *vide* the *proviso*. The Company or the local authority, as the requiring body, are not "persons interested" [vide notes under section 3(b) *ante*]. So it has been observed by the Calcutta High Court—"A Company or corporation for whose benefit land may be acquired by the Collector is not a necessary party in the proceeding and there can be no doubt that no proceeding can properly go on in the absence of the Secretary of State for India in Council. Under section 50 of the Act, a Company or a local authority for whose benefit the acquisition is made may appear and adduce evidence for the purpose of determining the compensation. But that is in the nature of the addition of a party simply for the purpose of watching the proceedings or assisting the Secretary of State. Such a Company or local authority has not the power to ask for a reference under section 18 of the Act neither does the Act give it the right of appeal" [2].

[1] This obligation of the Company is embodied in the agreement taken under section 41 *ante*.

Educational and charitable institutions sometimes receive a grant-in-aid for land acquisition, from Government or a local authority : and in such case, unless the proceedings are taken under Chapter VII, the liabilities as to costs are settled by arrangement between the Government (or local authority) and the institution, before the acquisition proceedings are taken up. See notes under proviso to section 36(*1*) *ante*.

[2] *Municipal Corporation of Pabna vs. Jogendra Narain Raikut*, (1908) 13 C. W. N. 116. See also *Nihal Chand vs. District Board, Mianwali*, A. I. R. 1936 Lah. 564.

Exemption from stamp-duty and fees.

51. No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

Notice in case of suits for anything done in pursuance of Act.

52. No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends.

Notice required for suits for acts done in pursuance of the Act.

This section [1] lays down a matter of procedure when any suit or proceeding is to be instituted against any person *for anything done in pursuance of this Act.* First, one month's previous notice shall be given to such person and secondly no such suit shall lie if there has been a tender of sufficient amends [2].

[1] The old Act X of 1870 (section 58) had also the same provisions as this section : and a further provision that "no suit could be brought to set aside an award under the Act". This latter provision was deleted by the Act of 1894, probably because of the provision in section 12 that when the the Collector has filed an award it shall be "final".

[2] This provision of tender of sufficient amends follows similar provision in section 185 of the (English) Lands Clauses Consolidation Act, 1845, which is as follows :—"If any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of the Act or any Special Act, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action".

No such suit lies where other remedies are provided for in the Act.

2. One general principle of interpretation of special Acts, recognised both in England and in India, is that where a special line of remedy is provided in such Act no other remedy is available to the parties [3]; and on this principle it would appear that there cannot be any separate suit or other proceeding against acts for which remedies are provided for in the Land Acquisition Act. For example where the Collector has made an award and the party is dissatisfied with the valuation or the apportionment, the party's remedy is by a reference under section 18. Or, where a person has wrongly taken payment of the compensation money, his liability and the remedy are provided in the third *proviso* to section 31(2) *ante*. Or, where the authorities proceed to acquire only a part of a house etc. in which case the remedy is by objection under section 49(*1*). Similarly, for delay in completing acquisition—the remedy is to claim damages under clause sixthly of section 23(*1*), and for delay in payment—interest under section 34 *ante*. In cases of temporary occupation of land, remedy for insufficient damages offered by the Collector lies in a reference under section 35(*3*).

3. The words "anything done in pursuance of this Act" mean "tortious act done under the enactment" [4]. Where a suit under section 45 of the Specific Relief Act was brought against the Calcutta Improvement Trust and the Corporation of Calcutta for an order to abandon proceedings for acquiring certain premises, it was held (per Greaves J).—"section 52 of the L. A. Act clearly has no application as these are not proceedings commenced against any person for anything done in pursuance of the Act whatever the indirect effect may be of any order which I may make" [5].

[3] *Saibesh Chandra Sarkar vs. Sir Bejoy Chand Mahatap*, 26 C. W. N. 506, 65 I. C. 711, A. I. R. 1922 Cal. 4. See also notes at page 382 *ante*.

[4] *Ezra vs. Secy. of State* (1902) 30 Cal. 36 at 73.

[5] *Manick Chand Mahata vs. Corporation of Calcutta and Calcutta Improvement Trust*, (1921) 48 Cal. 916.

Code of Civil Procedure to apply to proceedings before Court.

53. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure, shall apply to all proceedings before the Court under this Act.

C. P. Code does not apply to Collector's proceedings.

The Collector is not a Court [1] and the section does not apply to the proceedings before the Collector. Thus the Collector cannot review his own order [2]. The question as to whether the High Court has jurisdiction under section 115 of the Civil Procedure Code to interfere with the Collector's order rejecting an application for reference under section 18 or not making a reference under section 30 or section 49, has been the subject of judicial decisions, for which see notes under these sections *ante*.

Application of the C. P. Code in the Court's proceedings.

2. The "Court" under this Act means the Court as defined in section 3(*d*) *ante*, that is the Reference Court. Under this section, the provisions of the Civil Procedure Code would be followed in all proceedings before the reference Court, save in so far as they may be inconsistent with anything contained in this Act. Sections 18, 21, 22, 26, 30, 31(*2*), 37, 49(*1*), and 54 indicate where and to what extent the provisions of the Civil Procedure Code have to be deviated from.

The function of the Court commences only when there is a reference by the Collector under section 18, 30, 35(*2*), 37 or 49(*1*), or when there is a deposit under section 31(*2*).

3. A reference under section 18 may be either on the ground of valuation or on the ground of apportionment. In

[1] *Ezra vs. Secy. of State* (1902) 30 Cal. 36; *Durgadas vs. Queen Empress* 27 Cal. 820.

[2] *Kashi Prasad vs. Notified Area, Mahoba*, A. I. R. 1932 All. 598, 54 All. 282, 148 I. C. 111.

either case the application of the referring claimant on which the reference is made by the Collector, takes the place of plaint with the referring claimant as the plaintiff [3]. In the case of a valuation reference, the Collector (that is, the Government) is the proper defendant, [4] and not the requiring body, such as the local authority or Company, although section 50(*2*) *ante* permits them to appear and adduce evidence. In the case of an apportionment reference, all persons interested in the objection are in the position of defendants, and they have all to be served with notice, vide section 20(*b*) *ante*.

Referring claimant-plaintiff.

4. A reference under section 30 relates to matters of apportionment only, and the Court has to decide on whom the burden of proof lies and who is to lead evidence first.

Burden of proof.

In a valuation reference, the burden of proof is on the claimant to show that the award made by the Collector is insufficient and he has to commence the case ; but this burden will vary according to the nature of the enquiry made by the Collector under section 11. If the Collector has not considered all materials and has given no reasons in support of his decision, the burden which the claimant has to discharge is very light [5]. But howsoever this may be, when the claimant has to begin his evidence first, he has to complete it ; and the Government has to rebut it and support the Collector's award by positive evidence.

5. The application for reference under section 18, may be of a mixed nature, and the Collector sends one reference

[3] *Ezra vs. Secy. of State* (1902) 30 Cal. 36 : *Bansi Lal vs. Collector of Shaharanpur*, (1884) 4 All. W. N. 88.

[4] *Nihal Chand vs. Dt. Board. Mianwali*, A. I. R. 1936 Lah. 564 : *Fakir Chand vs. Municipal Committee, Hazrao* (1918), 18 I. C. 37.

[5] *Harish Chandra Neogy vs. Secy. of State*, (1907) 11 C. W. N. 875 : *Fink vs. Secy. of State*, (1907) 34 Cal. 599 : *Madhusudan vs. Collector of Cuttack*, (1901) 6 C. W. N. 406, see notes under section 19 *ante*.

including in it both valuation and apportionment objections. The Court splits it up into parts, separating out the valuation portion and even sub-dividing the apportionment portion where various objections affect different parties. Usually the valuation portion is taken up first. Even when the title of the claimant to any portion of the compensation is disputed, it has been held [6] that the question of the title of that party (that is the apportionment part) need not be enquired into first ; that question will arise later when the apportionment matter comes up. This may not impossibly, result in useless enquiry as regards the valuation question, when the referring claimant is eventually adjudged as having no right to any portion of the compensation money.

Mixed references.

6. The Court has inherent power to postpone the hearing of a case for the convenience of the parties and for a proper adjudication. Where in an apportionment case, one of the parties applied for stay of the proceedings till he obtained probate of a Will for which he had applied and on which he based his claim, it was held—"The right course for the Tribunal is to stay the proceedings before the Tribunal, till the probate proceedings have been terminated in this Court" [7]. In the case of *Kalipada Banerji vs. Charubala Dasee* [8], Mullik J. observed—one of the essential conditions necessary for the application of section 10 of the Code of Civil Procedure is that the Court trying the earlier suit must be competent to grant the relief asked for in the later suit. A Court of ordinary civil jurisdiction trying the earlier title suit, not being competent to grant relief as to valuation and apportionment, for which a subsequently instituted reference is pending before the special L. A. Court, section 10 of the Civil Procedure Code cannot be invoked

Section 10 of the Civil Procedure Code.

[6] *J. C. Galstaun vs. Secy. of State,* (1905) 10 C. W. N. 195.

[7] *Abdul Alim Abed vs. Badaruddin Ahmed* (1923) 28 C. W. N. 295, A. I. R. 1924 Cal. 787.

[8] *Kalipada Banerji vs. Charubala Dasee* A. I. R. 1988 Cal. 837, 60 Cal. 1096.

to stay the reference pending the decision of the title suit. In the same case, Jack J. observed—even if section 10 of the Code has no application, the Court has inherent power to stay the proceedings before the L. A. Court, till the disposal of the title suit, if good grounds based on convenience or otherwise, are made out.

Res judicata and section 11 of the C. P. Code.

7. Earlier decisions tended to the view that the effect of the L. A. Court's decision was restricted to the compensation money (that is the subject-matter in the particular case) and "should not be treated as *res judicata* affecting other parts of the claimant's property under the same title." [9] But the point has been set at rest by the Privy Council case of *T. B. Rama Chandra Rao vs. A. N. S. Rama Chandra Rao* (1921). [10] Their Lordships of the Judicial Committee observed "There has in the present case been a clear decision upon the very point now in dispute which cannot be re-opened. (That was a decision on an interpretation of the Will as to the power of alienation under section 32 of the Act.) The High Court appear only to have regarded the matter as concluded to the extent of the compensation money, but that is not the true view of what occurred, for as pointed out in *Bardar Bee vs. Habib Merican Noordin* [11] it is not competent for the Court, in the case arising between the same parties, to review a previous decision, no longer open to appeal, given by another Court having jurisdiction to try the second case. If the decision was wrong, it ought to have been appealed from in due time." The interested parties cannot be allowed to say that the value of the subject-matter of the former decision was trifling. "If such a plea were admissible, there would be no finality in litigation. The importance of a judicial

[9] *Bhaia Disgaj Deo vs. Kalicharan Singh* (1907) 11 C. W. N. 525, following *Nobodeep Chunder vs. Brojendra Lall Roy* (1881) 7 Cal. 406 : *Mahadevi vs. Neelamani* (1896) 20 Mad 269. But the opposite view taken in *Ram Chander Singh vs. Madho Kumari* (1885) 12 Cal. 484 (P. C.).

[10] 45 Mad. 320, 26 C. W. N. 713, 49 I. A. 129.

[11] 1909 A. C. 615, 101 L. T. 161.

decision is not to be measured by the pecuniary value of the particular item in dispute." As for the argument that the former decision was not in a suit, their Lordships following *G. H. Hook vs. Administrator-General of Bengal* [12] observed that "the principle which prevents the same case being twice litigated is of general application and is not limited by the specific words of the Code in this respect."

Order 1, Rule 10 of the C. P. Code.

8. *Addition of parties* :—In references under the Land Acquisition Act addition of parties under certain restrictions is permissible. Under Order 1, rule 10(2) of the Civil Procedure Code, a person may be added as a party—(i) when he ought to be joined (proper party) or (ii) when without his presence there cannot be complete adjudication (necessary party). But sections 18, 20 and 21 of the Land Acquisition Act impose the further restriction, e. g. the scope of the reference must not be enlarged. In the case of *Hashim Ibrahim Saleji vs. Secy. of State,* (1927) 31 C. W. N. 384, one of the mutwalis of the wakf-estates made a reference under section 13 of the Act to the Collector. Before the Reference Court, the other mutwalis applied for being added as parties to the reference case. It was held "the addition of the parties to the proceeding will in no manner enlarge the scope of his (Judge's) enquiry." The High Court further observed :—"In references under the Land Acquisition Act the addition of parties is under certain circumstances permissible. It does not seem to matter that the subject of reference should be one of valuation rather than of apportionment. The real point is that the principle of Or. 1 r. 10(2) C. P. C., has been held to apply and the question for decision is whether under the present circumstances these persons are necessary or proper parties." The other mutwalis were allowed to be added as parties to the reference case. In *Golap Khan vs. Bhola Nath Marick,* (1910) 12 C. L. J. 545, the Collector referred the apportionment dispute to the Civil Court. One of the claimants Amulya claimed one-third share in the compensation. The applicant Golap Khan

12 48 Cal. 499, 48 I. A. 187, 25 C. W. N. 915, 60 I. C. 681.

attached the money in the Court so far as it represented the interest of Amulya, and applied to the Judge for being added as party to the proceedings. The Judge dismissed the application. Amulya surrendered his claim in favour of the other claimants and a petition of compromise was filed and the Judge ordered in terms thereof. In the High Court, Mookerjee J. observed "we must assume that Amulya was really interested in a third share of the compensation money. If he had such interest it is obvious that the effect of the compromise was to transfer the interest which he possessed to the other claimants ; such transfer after attachment and the subsequent delivery of the funds pursuant thereto were clearly contrary to the provisions of section 64. It follows consequently that the Court below ought not to have given effect to such compromise, because under Order 23 rule 3 of the Code of 1908, the Court must determine whether the agreement or compromise was lawful before effect is given to it. The position, therefore, is obvious that the claim of the petitioner ought not to have been ignored ; he should have been made a party and his claim properly investigated." In *Promotha Nath Mitra vs. Rakhal Das Addy*, (1910) 11 C. L. J. 420, during the pendency of the proceedings for acquisition before the L. A. Collector, the property under acquisition was sold for arrears of revenue. The sale was confirmed after the award by the Collector. On the application of the defaulting proprietor the Collector referred the matter for apportionment. The purchaser Promotha then applied to the L. A. Judge for being made a party but it was refused. The High Court in revision held that the purchaser was entitled to be made a party to the reference case but he could urge only such objections as might have been taken by the defaulting proprietor. His special rights as a purchaser in a revenue-sale should be asserted in a separate suit. Mookerji J. observed "The principle which underlies these cases is that the Civil Court is restricted to an examination of the question which has been referred by the Collector for decision and that the scope of the enquiry cannot be enlarged at the instance of parties who have not obtained any order of reference". In a number of earlier cases, the Calcutta High Court held that according to

the sections of Part III of the Act, "all that the Court can deal with is the objection which has been referred to it ; it cannot go into a question raised for the first time by a party who had not referred any question or any objection to it under section 18 of the Act." [13]

Effect of non-appearance—exparte order.

9. There is nothing in Order 9 of the Civil Procedure Code which is inconsistent with anything in this Act, and the same consequences for non-appearance as laid down in the several rules in this Order would follow and the provisions under rules 9 and 13 of Order 9 of the Civil Procedure Code for restoration of the case apply [14].

Discovery etc.

10. The provisions in the Civil Procedure Code regarding discovery under Order 11 rule 12 apply to the proceedings before the L. A. Court [15]. Similarly, the L. A. Court has inherent power to call for records [16].

Court's inherent powers : Sec. 151 C. P. Code.

11. The Special Land Acquisition Judge has inherent power to recall money improperly paid to a wrong person. [17] So also the Court has inherent power to consolidate cases when necessary for the ends of justice or simplicity of hearing and the Court should do so when the parties are the same, evidence

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[13] *Abu Bakar vs. Peary Mohan Mukerjee* (1907) 34 Cal. 451 : followed *Gobinda Kumar Roy Chowdhury vs. Debendra Kumar Roy Chowdhury*, (1907) 12 C. W. N. 98 : *Mahammad Safi vs. Haran Chandra Mukerjee*, (1908) 12 C. W. N. 985.

[14] See *Behary Lal Sur vs. Nanda Lal Goswami* (1907) 11 C. W. N. 430 : *Kishan Chand vs. Jagannath*, 25 All. 183 : *Mahomed vs. Collector, Toungoo*, A. I. R. 1927 Rang. 150, 5 Rang. 80, 102 I. C. 379.

[15] *British India Steam Navigation Co. vs. Secy. of State*, (1910) 38 Cal. 230, 15 C. W. N. 87 : *Kishan Chand vs. Jagannath Prasad* (1902) 52 All. 183.

[16] *Naresh Chandra Bose vs. Hiralal Bose* (1916) 43 Cal. 289, 34 I. C. 268, 20 C. W. N. 860,—regarding the power of the Tribunal under the Calcutta Improvement Act.

[17] *Jogesh Chandra Roy vs. Yakub Ali* (1912) 17 C. W. N. 1057 : *Mrinalini vs. Abinash* (1910) 11 C. L. J. 585 : *Nabinkali vs. Banalata* (1895) 32 Cal. 921. Rather different view—*Gobinda Ranee vs. Brinda Ranee* (1908) 35 Cal. 1104.

is the same and the plots acquired are near each other forming part of one estate, though in the occupation of different persons.[18]

12. The Special Land Acquisition Judge is competent to review his own order or judgment. There is no provision in the Land Acquisition Act which forbids the application of Order XLVII of the Code of Civil Procedure to the proceedings under this Act[19].

Review.

13. The High Court has power to interfere with the orders of the L. A. Court in revision under section 115 of the Code of Civil Procedure, and in numerous cases the various High Courts have interfered with the orders of the L. A. Court in revision[20].

Revision.

Appeals in proceedings before Court.

54. Subject to the provisions of the Code of Civil Procedure, 1908, applicable to appeals from original decrees, [and notwithstanding anything to the contrary in any enactment for the time being in force], an appeal shall [only] lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court [and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to His Majesty in Council subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908 and in Order XLV thereof].

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18 *Fink vs. Secy. of State* (1907) 34 Cal. 599 : *Kashi Prasad vs. Secy. of State* (1902) 29 Cal. 140.

19 *Sakti Narain Singh vs. Bir Singh*, 1 P. L. T. 219, 58 I. C. 510.

20 *Makhan Lal vs. Secretary of State*, (1933) 56 All. 656 (F. B.)—where it is observed that "the fact that an appeal is allowed from an award of the Court constituted under the L. A. Act is, in our opinion conclusive of the fact that the Court is subordinate to the High Court."

Section substituted in 1921.

This section was substituted by section 3 of the Land Acquisition (Amendment) Act 19 of 1921. The old section stood as follows:—

"Subject to the provisions of the Code of Civil Procedure applicable to appeals from original decrees, an appeal shall lie to the High Court from the award or any part of the award of the Court in any proceedings under this Act".

From a comparison of the old section with the substituted one, it will appear that the expression—"in any proceedings under this Act", is not new. The changes made are really in the insertion and addition of the portions shown within brackets. Before the Act I of 1894, the provisions regarding "Appeals", were contained in section 39 of the old Act X of 1870 [1].

First appeal always to the High Court.

2. The expression—"notwithstanding anything to the contrary in any enactment for the time being in force" and the word "only", indicate that whatever be the provisions in the Civil Procedure Code, the first appeal from an award of the Reference Court shall always lie to the High Court irrespective of the value of the appeal.

Second appeal lies under the Amendment of 1921.

3. The last portion of the section which was added by the Amendment of 1921, makes the position regarding second appeal, clear. Prior to this Amendment, the Privy Council in the case [2] of *Rangoon Botatoung Co.* (1912), had held that section 54 as it stood then, gave only a limited appeal from the award of the Reference Court to the High Court, and that section 53 gave no right "to carry an award made in an arbitration as to the value of land taken for public purposes up to this Board, as if it were a decree of the High Court made in the course of its ordinary jurisdiction". The effect of the Amendment of 1921 is that a second appeal against the decision

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1 See Appendix.

2 *Rangoon Botatoung Co. Ltd vs. Collector of Rangoon* (1912) 40 Cal. 21, 39 I. A. 197, 16 C. W. N. 961.

of the High Court lies, subject to the provisions of section 110 of the Civil Procedure Code; and it has been held in the case [3] of *Lala Narsingh Das* (1924), that under this Amendment an appeal to the Privy Council is maintainable. Simultaneously with this amendment of section 54, a new sub-section (2) was added to section 26 *ante*, by the same Amendment Act, that an award made under that section shall be deemed to be a decree.

Appeals in apportionment cases:

4. Section 54 uses the word "award". Till the decision of the Privy Council in *Ramachandra Rao's* case [4] in 1921, the Courts in India were inclined to hold that decisions of the Reference Court in matters of title or apportionment, were "awards" [5], and as such appealable under this section. But the Privy Council in this case held that—"The award as constituted by statute is nothing but an award which states the area of the land, the compensation to be allowed and the apportionment among the persons interested in the land of whose claims the Collector has information, meaning thereby people whose interests are not in dispute, but from the moment when the sum has been deposited in Court under section 31(2) the functions of the award have ceased; and all that is left is a dispute between interested people as to the extent of their interest. Such disputes form no part of the award and it would indeed be strange if a controversy between two people as to the nature of their respective interests in a piece of land should enjoy certain rights of appeal which would wholly be taken away when the piece of land was represented by a sum of money paid into Court".

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[3] *Lala Narsinghdas vs. Secy. of State* (1924) 52 I. A. 133, A. I. R. 1925 P. C. 91, 29 C. W. N. 822.

[4] *Ramachandra Rao vs. Ramachandra Rao*, A. I. R. 1922 P. C. 80, 49 I. A. 129, 26 C. W. N. 713, 35 C. L. J. 545.

[5] *Sheo Ratan Rai vs. Mohri* (1899) 21 All. 354, following *Balaram Bhramaratar vs. Sham Sundar* (1896) 23 Cal. 526; *Hasura Singh vs. Sunder Singh*, 97 P. R. 1919.

The result is that a decision of the Reference Court in a matter of title or apportionment is not an award and as such the provisions of this section cannot be invoked for appeal therefrom. In 1928, the Madras High Court [6] held that the decision of the Civil Court on a reference under section 30 was not an award under Part III of the Act but was a decree governed by the Civil Procedure Code and the Civil Courts Act; and so "the subject matter of the *lis* being only Rs. 1349/- the appeal from the Subordinate Judge does not lie to the High Court but only to the District Court because the value is less than Rs. 5,000/-". This was approved and followed by the Bombay High Court [7] and their Lordships observed—"the provisions of section 54 of the Act are subject to the provisions of the Code of Civil Procedure and although the order determining the rights of the parties is not, in view of the Privy Council judgment, an award, it is certainly a decree or of the nature of a decree and an appeal would lie against it."

—governed by the Civil Procedure Code.

5. But a contrary view was taken by the Madras High Court [8], in a case in 1931. Their Lordships referred to Lord Bramwell's enunciation [9] of the law regarding appeals, that—"an appeal does not exist in the nature of things; a right of appeal from any decision of any tribunal must be given by *express* enactment",—and it was held that neither section 54 of the Act nor section 96 of the Civil Procedure Code, gives the High Court any power to act as a Court of Appeal from the decisions of the Special L. A.

Contrary view in Madras cases.

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[6] *J. Venkata Reddi vs. J. Adina ayana Rao*, 52 Mad. 142, 119 I.C. 42.

[7] *Raghunath Das Harjivan Das vs. Dt. Supdt. of Police, Nasik* (1932) 57 Bom. 314, 144 I.C. 710. See also *Secy. of State vs. Narayanaswamy Chettiar* (1931) 55 Mad. 391—(though a case under section 49 of the Act).

[8] *Mahanta Bagavathi Doss Bavoji vs. M. Sarangaraja Iyengar* (1931) 54 Mad. 722, A. I. R. 1931 Mad. 586. See also *Krishnamoorthi vs. Spl. L. A. Dy. Collector, Kumbakonam* (1935) 59 Mad. 554, though a decision under section 49 of the Act.

[9] *Sandback Charity Trustees vs. North Staffordshire Ry. Co.* (1877) 3 Q. B. D. 1.

Court, which were not "awards", but only "decrees": at any rate in a case where, as in the case before them, the trial Judge was not the Principal Civil Court of Original Jurisdiction, but only a Special Judicial Officer appointed by the Local Government under section 3 (d). In the Bombay case of 1932 referred to in the last paragraph, it was argued on behalf of the respondents to the appeal, that section 39 af the old Act X of 1870 expressly provided for appeals in cases of "apportionment references", and that as the Act of 1894 did not make a corresponding provision, the proper interpretation would be that no such appeal lies. This contention was not accepted.

6. *Appeals from the decision of the Court under section 49 of the Act*:—Early decisions are that the order of the Judge on a reference under section 49 of the Act is not an award within the meaning of section 54 of this Act and therefore no appeal lies to the High Court from such an order. [10] Following the decision of the Privy Council in *Rama Chandra Rao vs. Rama Chandra Rao,* [11] the Madras High Court [12] observed :—"if the conclusion on a reference under section 31 is a decree, there is no reason why a decision under section 49 should not be regarded as a decree." It was held that an order of the Judge under section 49 was appealable as a decree under the Code of of Civil Procedure. But a later case of the Madras High Court holds that no appeal lies from an [13] order of the Judge under section 49 of the Act, as such an order is not an award within the meaning of section 54 and there is no provision in the Land Acquisition Act which provides for any right of appeal from a decision which is not an award.

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10. *Sarat Chandra Ghose vs. Secy. of State* (1919) 46 Cal. 861, 23 C.W.N. 878. See also *Mulraj Khatav vs. Collector of Poona* (1918) 15 Bom. L. R. 802 : *Giles Siddon vs. Dy. Collector, Madras* (1912) 17 I. C. 117. In *Dalchand vs. Secy. of State* (1916) 43 Cal. 665, it was remarked that appeals had been entertained against such orders in the Allahabad and Madras High Courts.

11. *Ramachandra Rao vs. Ramachandra Rao* (1922) 26 C. W. N. 713, 49 I. A. 129.

12. *Secy. of State vs. Narayanaswami Chettiar* (1931) 55 Mad. 391.

13. *Krishnamoorthi vs. Spl. Dy. Collector, Kumbakonam* (1935) 59 Mad. 554.

7. *Appeals from orders of the Court under section 32 of the Act* :—Prior to the decision of the Privy Council in the case of *Rama Chandra Rao* [14], the High Court [15] of Calcutta held that orders of L.A. Court under section 32 of the Act were awards and as such appealable under this section. But the Privy Council [14] regarded these decisions "as a misapprehension as to the meaning of the award", and held that an order under section 32 was not an award. It seems from the judgment of the Privy Council that their Lordships regarded an order under section 32 as a decree and appealable in the ordinary way. See paragraphs 4 & 5 *ante*.

No appeal against an order dismissing an application for setting aside an exparte award :—An appeal is not maintainable against an order of the L.A. Judge dismissing an application under Order 9 rule 13 of the Code of Civil Procedure for setting aside an ex parte award [16].

Calcutta Improvement Appeals Act.

8. Appeals from awards of the Tribunal constituted under the Calcutta Improvement Act, 1911 are regulated by the Calcutta Improvement (Appeals) Act, 1911 (Act XVIII of 1911). [17] Under the said Act the grounds on which an appeal can lie are more limited than even the grounds on which motions are admitted under the provisions of section 115 of the Code of Civil Procedure. Further, from the award of the Tribunal, in no event whatsoever, an appeal lies to the Privy Council [18].

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[14] *Rama Chandra Rao vs. Rama Chandra Rao* (1922) 49 I. A. 129, 26 C. W. N. 713, 85 C. L. J. 545.

[15] *Balaram Bharamaratar vs. Sham Sunder*, (1890) 23 Cal. 526 : *Trinayani vs. Krishna Lal* (1910) 17 C. W. N. 985N.

[16] *Rajendra Nath Kanrar vs. Kamal Krishna Kundu Chowdhury* (1931) 36 C. W. N. 852, following *Hasun Molla vs. Tasiruddin* (1911) 39 Cal. 898 : *Banshidur Marwari vs. Secy. of State* (1926) 54 Cal. 812 and dissenting from *Behary Lal Sur vs. Nanda Lal Goswami* (1906) 11 C. W. N. 480.

[18] *Secy. of State vs. Hindusthan Co-operative Insurance Society Ltd.* 58 I. A. 259, 59 Cal. 55, 35 C. W. N. 794.

9. *Court Fees* :—Section 8 of the Court Fees Act, 1870, provides that the amount of fee payable on a memorandum of appeal against an order relating to compensation for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant. Whether the appeal is against a decision in a valuation reference or an apportionment reference, the court-fee payable is *advalorem* fee [19] on the difference between the amount awarded and the amount claimed by the Appellant under section 8 or under Article I of Schedule 1 of the Court Fees Act. Thus, where the Reference Court in an apportionment reference, allotted the entire compensation to one party, and the other party in whose favour the Court awarded nil, appealed, the Calcutta High Court held [20] that the Appellant was to pay *advalorem* court fees on the entire amount claimed by the Appellant.

Court Fees.

As regards the amount of the court-fee payable by the Secretary of State against the award of the Court in a valuation reference, the earlier view [21] was that a fixed court-fee of Rs. 10/- was payable on the memorandum of appeal under Article 17 (iv) of the Second Schedule of the Court Fees Act. But the later views [22] are that the Secretary of State is also to pay *advalorem* court-fees. It has been held in a number of cases [23] that the court fee payable on an appeal against a decision of

[19] Article 1 of the Schedule I of the Court Fees Act, 1870.

[20] In Re. *Anandalal Chakrabarty & others* (1931) 35 C. W, N. 1103 (Appeal from a decision of the Tribunal under the Calcutta Improvement Act, 1911.)

[21] *Secy. of State vs. Basawa Singh*, 17 I. C. 764, 57 P. R. 1918.

[22] *Secy. of State vs. K. S. Bonerjee* 97 I. C. 140, A. I. R. 1927 Cal. 45 : *Collector of Rangoon vs. Kozina* A. I. R. 1928 Rang. 197, 6 Rang 281.

[23] *Trinayani Dasi vs. Krishnalal De* (1912) 17 C. W. N. 988, 39 Cal. 906, 6 I. C. 157 following *Sheorattan vs. Mohri* (1905) 32 Cal. 921 and *Kasturi Chetty vs. Dy. Collector of Bellary* 28 Cal. 526 but the force of these decisions has been much weakened since the Privy Council decided in *Ramachandra Rao vs. Ramachandra Rao* (1922) 49 I. A. 129, 26 C. W. N. 713, that the decisions of the Court under section 32 of this Act are not awards.

the Court under section 32 of this Act is to be computed on the estimated value of the relief sought in the Appeal.

Power to make rules.

55. (*1*) The Local Government shall * * * [1] have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made :

[2] [Provided that where the provisions of this Act are put in force for the acquisition of land—

(*a*) for the purposes of any railway, or

(*b*) for such other purposes, connected with the administration of a central subject as defined in section 45-A of the Government of India Act, as the Governor General in Council may, by notification in the Gazette of India, declare in this behalf,

the power to make, alter and add to rules conferred on the Local Government by this sub-section shall be exercised subject to the control of the Governor General in Council.]

(*2*) The power to make, alter and add to rules under sub-section (*1*) shall be subject to the condition of the rules being made, altered or added to after previous publication.

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1 The words "Subject to the control of the Governor General in Council" were omitted by section 2 and Schedule I of the Devolution Act, 1920 (Act 38 of 1920).

2 This *proviso* was added by the Devolution Act, 1920 (Act 38 of 1920).

(3) All such rules, alterations and additions shall, * * *[3] be published in the official Gazette and shall thereupon have the force of law.

Rules have been framed under this section by the Governments of Bengal, Bombay, United Provinces, Central Provinces, Bihar and Orissa, and Ajmere-Merwara for the guidance of officials. For rules (having the force of law) issued by the Government of Bengal under this section, see Bengal Land Acquisition Manual, 1917, Part I.

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[3] The words "When sanctioned by the Governor-General in Council" were omitted by section 2 and Schedule Part I of the Decentralization Act, 1914 (Act 4 of 1914).

LAND ACQUISITION (MINES) ACT,
(ACT XVIII OF 1885).

CONTENTS.

Sections :—

ACT NO. XVIII OF 1885.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor General on the 16th October, 1885.*)

An Act to provide for cases in which Mines or Minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870.

Whereas it is expedient to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870 ; It is hereby enacted as follows :—

For a history of legislation regarding treatment of mines and minerals during Land Acquisition, see "Introduction".

Object and reasons.

2. "Land" means anything down to the centre of the earth, and includes mines and minerals. Unless, therefore, there were special provisions that mines and minerals when not required for the purpose of the acquisition, might be excluded, they would have to be unnecessarily acquired also and compensated for.

Provisions in the Act of 1863.

Section 50 of the old Land Acquisition Act XXII of 1863 laid down that mines and minerals did not pass to the acquiring body unless compensation had been *expressly* allowed at the time of acquisition. But it was also provided in section 51 that when mines and minerals did not pass with the acquisition of surface-land, the owners of mines might be required at any time to abandon their working within 40 yards from the land acquired, or to work them in a manner as not to endanger the works for which land was acquired, the owners being entitled to claim compensation for the loss suffered by reason of such restriction.

The Land Acquisition Act X of 1870, repealed the Act of 1863, but omitted to embody any provision corresponding to sections 50 and 51 of the Act of 1863. To remove this defect, and particularly because at that time it was "being proposed to extend railways across districts where there (was) a certain amount of coal to be found", this special Act XVIII of 1885 was passed : *vide* Statement of Objects and Reasons.

Omitted in 1870 :

—rectified in 1885.

3. The provisions of the Act are more or less on the lines of the corresponding sections 77 to 88 of the (English) Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. Ch. 20). The general plan of the Act is that an acquisition of land under the Land Acquisition Act (now Act I of 1894), may be made exclusive of mineral rights (section 3). The owner of the mines under the surface which is acquired, may then work those mines : but he must do it in a "proper" manner, otherwise he may be liable to damages (section 7). If damage is caused or is likely to be caused to the works (e. g. a railway) for which the land is acquired, even when the mines are "properly" working, question of putting restrictions on the working or of stopping it altogether may arise. Provision is made in the Act for compensation to the party in such case, and for adjudication by the Civil Court, in case of disagreement (sections 9 and 10).

Follows the English Act.

General plan of the Act.

4. The Act contains references to several sections of the old Land Acquisition Act of 1870, which was in force when it was passed. Under section 2(3) of the Land Acquisition Act of 1894, these references are to be construed as referring to the corresponding provisions in the Act of 1894.

Interpretation.

1. (*1*) This Act may be called the Land Acquisition (Mines) Act, 1885 ; and

(*2*) It shall come into force at once.

(*3*) It extends in the first instance to the

Short title, commencement and local extent.

territories administered by the Governor of Madras in Council and the Lieutenant-Governor of Bengal, but any other Local Government may, from time to time, by notification in the official Gazette, extend this Act to the whole or any specified part of the territories under its administration.

Application of the Act.

Sub-section (3) :—The Act by its own operation applies to the Provinces of Madras and Bengal (as in 1885 that is, inclusive of Bihar and Orissa). It has been extended by Regulation III of 1816, to the Sonthal Parganas, and by Regulation I of 1894 to Angul and the Khond Mahals.

It does not apply to Bombay and other Provinces where the right in mines and minerals belongs to Government : see para 2 of the notes under section 2 *post*.

Saving for mineral rights of the Government.

2. Except as expressly provided by this Act, nothing in this Act shall affect the right of the Government to any mines or minerals.

Right of Government in mines :

Right of Government :—The Crown is *prima facie* the owner of all mines and minerals underground, unless rights therein have been expressly alienated. The Permanent Settlement Regulations of 1793 for Bengal, Bihar and Orissa, declared that the Zemindars and others with whom settlements of land-revenue would be made according to those Regulations, were "proprietors" of the land ; and it has been held [1] that as such proprietors, they are also the owners of mines and minerals. Regulation XXV of 1802

-in the permanently settled areas :

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[1] *Sashi Bhusan Misra vs. Jyoti Prasad Singh Deo* (1916) P. C. 144 I.A. 46, in which Lord Buckmaster observed—"By the Permanent Settlement of 1793, all the mineral rights were confirmed to the Zemindars". But mere settlement of land-revenue by the Government does not pass such right.

which extended the Permanent Settlement to the Northern Circars and certain other parts of the Madras Presidency, explained the object as—"to grant the Zemindars and other landholders, their heirs and successors a permanent property in their land in all time to come." Permanent Settlement has been made also in the old Beneras Province comprising the districts of Beneras, Juanpur, Ghazipore, Ballia and northern part of Mirzapur. In Chota Nagpur, about the whole of Manbhum and Palamau districts, the northern part of Singhbhum (formerly part of Midnapur), and Hazaribagh are also now permanently settled. Excluding Daman-i-kol, the greater part of the rest of Sonthal Parganas comprises also permanently settled estates.

-in Bombay and other places.

2. Bombay Act V of 1879 (sec. 69) declares and reserves the right of Government to mines and mineral products in all unalienated lands. The Punjab Land Revenue Act XXXIII of 1871 (sec. 29) declares that mines of metal or coal and goldwashings shall in every case be deemed to be the property of Government. The Ajmere Land and Revenue Regulation II of 1877 (sec. 3) lays down that "except in the case of lands in respect of which *istimrari* Sanads have been granted by Government, "the Government shall be presumed until the contrary is proved to be the sole owner of all mines opened and unopened of metal, coal and other valuable minerals." The Central Provinces Land Revenue Act XVIII of 1881 (sec. 151) provides that unless otherwise expressly recorded in a Settlement-record or by the terms of a grant made by Government, the right to all mines, minerals, coal and quarries shall be deemed to belong to Government.

Declaration that mines are not needed.

3. (*1*) When the Local Government makes a declaration under section 6 of the Land Acquisition Act, 1870, that land is needed for a public purpose or for a

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See *Raja Sri Sri Durga Prasad Singh vs. Brojo Nath Bose* (1912), P. C. 39 I. A. 133 : *Kumar Hari Narain Singh Deo vs. Sriram Chakrabarty and others* (1910) P. C. 37 I. A. 136.

Company, it may, if it thinks fit, insert in the declaration a statement that the mines of coal, ironstone, slate or other minerals lying under the land or any particular portion of the land, except only such parts of the mines or minerals as it may be necessary to dig or carry away or use in the construction of the work for the purpose of which the land is being acquired, are not needed.

(2) When a statement as aforesaid has not been inserted in the declaration made in respect of any land under section 6 of the Land Acquisition Act, 1870, and the Collector is of opinion that the provisions of this Act ought to be applied to the land, he may abstain from tendering compensation under section 11 of the said Land Acquisition Act in respect of the mines, and may—

(*a*) when he makes an award under section 14 of that Act, insert such a statement in his award ;

(*b*) when he makes a reference to the Court under section 15 of that Act, insert such a statement in his reference ; or

(*c*) when he takes possession of the land under section 17 of that Act, publish such a statement in such manner as the Local Government [2] may, from time to time, prescribe.

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[2] The words "Local Government" were substituted in place of "Governor General in Council" by the Devolution Act xxxviii of 1920.

(3) If any such statement is inserted in the declaration, award or reference, or published as aforesaid, the mines of coal, iron-stone, slate or other minerals under the land or portion of the land specified in the statement, except as aforesaid, shall not vest in the Government when the land so vests under the said Act.

For the interpretation of the references to the Old Act of 1870, see para 4 of the notes under Preamble. The corresponding sections are indicated below :—

Act of 1870.	*Act of 1894.*
Section 6 corresponds to	section 6.
,, 11 corresponds to	,, 31.
,, 14 corresponds to	,, 11.
,, 15 carresponds to	,, 18.
,, 17 corresponds to	,, 17.

2. This section explains what mines and minerals may be excluded when land is acquired under the Land Acquisition Act. These are :—

(1) such mines and minerals as lie "*under* the land" ; and this means that surface-minerals cannot be excluded :

(2) such parts of the mines and minerals as it may be necessary to dig or carry away or use in the construction of the work for the purposes of which the land is being acquired.

The expression in the (English) Railways Clauses Consolidation Act, 1845 (section 7) corresponding to item (1) above is— "mines of coal, ironstone, slate or other minerals under any land purchased" i. e. acquired. So, it has been held that clay may be a mineral, but where it forms the surface or sub-soil of the land acquired, it is not mineral within the meaning of this

section [3]: nor sandstone [4]; that is to say these cannot be excluded from acquisition when the land is acquired. The *method of getting* the mineral is, however, not the criterion; and the view taken in English cases is that the words in the section included not only beds and seams of minerals got by underground working, but also such as can be worked by open or surface-operation [5].

Plan of sec. 3: object.

3. The plan of section 3 is that when Government considered that mines or minerals were not needed, it would make a statement to that effect: otherwise the acquisition will include mineral rights, and compensation would have to be paid for such rights [6].

Effect-when a statement has been made that mines and minerals are not needed.

4. When a statement was made under section 3 that mines or minerals underground were not needed, and accordingly no compensation was awarded for such mining rights, it was held that the owner could not be stopped from claiming to

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[3] A full discussion is given in *Glasgow Corporation vs. Farie* (1888) 13 App. Cas. 657. In this case Lord Herchell observed that the word "minerals' imports *prima facie*, and apart from any context, all substances other than vegetable matters forming the ordinary surface of the ground; and Lord Watson observed that "the word "mines" in a secondary sense, is very frequently applied to a place where minerals commonly worked underground are being wrought, though in particular case the working is from the surface". His Lordship observed that "the primary idea suggested to the popular mind by the use of the word (mines) is an underground working in which minerals are being or have been wrought". For the purposes of Land Acquisition, the words "under the land" or "lying under the land" indicate the test. See also *Caledonian Rail Co. vs. Glenboig Union Fireclay Co.* (1911) A. C. 290: *Great Western Railway vs. Carpalla United China Co.* (1910) A. C. 83.

[4] *North British Rail Co. vs. Budhill Coal and Sandstone Co.* (1910) A. C. 116.

[5] *Midland Rail Co. etc. vs. Robinson* (1889) 15 App Cas. 19: 37 Ch. D. 381. Also *North British Rail Co. vs. Bundhill*, ibid and *Symington vs. Caledonian Rail Co.* (1912) A. C. 87.

[6] This is the reverse of the plan in section 50 of the older Act XXII of 1863. For reasons, see paragraph 24 of the "Introduction".

work the mines [7]. His position [8] would, however, be governed by sections 4 to 10 *post*.

As for measure of damage, if any, when a statement has been issued that mines and minerals are not needed, see section 5 and notes thereunder.

Sub-section (2).

When statement may be subsequently inserted.

5. It may be that mines and minerals are not excluded by a statement at the time of the declaration under section 6 of the Land Acquisition Act of 1894, but it is decided later that mines and minerals are not needed. This may then be effected by a statement of the Collector inserted in his award or in his reference under section 18 of that Act.

—or published.

6. Where, however, possession of the land is taken in an urgent case, before the Collector makes his award (*vide* section 17 of the Land Acquisition Act), the statement has to be published in such manner as the Provincial Government [9] may prescribe. This is usually the same as in the case of a declaration under section 6.

Sub-section (3).

Effect of such insertion or publication.

7. The effect of an insertion or publication of a statement that mines or minerals are not required, as laid down in sub-section (3), is the same as if such statement was made along with the declaration under section 6 of the Land Acquisition Act of 1894.

[7] *Secy. of State vs. Gyanendra Nath Pande*, 8 Patna 742.

[8] In acquisitions made between 1868 and 1870 in which Act XXII of 1863 applied, the position would also be similar if no compensation was expressly awarded for mineral rights (*vide* sec : 50 of the Act of 1863) ; and the provisions of sections 4 etc. of the Act of 1885 would apply if question of working mines has arisen after 1885.

[9] The words "Governor-General in Council" in the original Act were substituted by "Local Government" by the Devolution Act 38 of 1920 ; and by the Adaptation of Indian Laws Order of 1937 issued by the Government of India, "Local Government" means now "Provincial Government".

Where no statement made.

8. Where no statement is made, inserted or published, that mines and minerals are not needed, these would be included in "land" and compensation would have to be awarded and apportioned* according to the principles in the Land Acquisition Act of 1894; and the same procedure of award, apportionment, reference etc. would follow. There is however one important point of difference in measuring the amount of compensation. Mineral resources under a particular site are not inexhaustible, and are thus not such as may be counted upon as yielding a return in perpetuity as in the case of land valued on agricultural produce or as building site. The profit and therefore the value of minerals at a particular site may be quite exhausted in the course of a few years, and this is an element which has to be taken into account in calculating the year's purchase to be allowed on any assumed net profit from working the mines. It may, therefore, quite be that where there is a lessee for a term of years, the number of year's purchase to be taken for the owner (lessor) on his net profit from rent and royalty would be the same as the number of years' purchase to be taken for the lessee on his net profit after deducting rent, royalties and other outgoings.

Compensation when mines and minerals are not excluded.

Cases of leases.

9. Damage for "severance", has also a special aspect when the line of acquisition intersects through a mining area of the same owner. Damages payable in such case under clause thirdly of section 23(*1*), may be estimated as subject to such arrangement for inter-connection as may be agreed upon at the time of acquisition.

Severance.

4. If the person for the time being immediately entitled to work or get any mines or minerals lying under any land so acquired is desirous of working or getting the same, he shall give the Local Government

Notice to be given before working mines lying under land.

notice in writing of his intention so to do sixty days before the commencement of working.

Owner may work mines:

The words "so acquired" mean—acquired according to the preceding section, that is with a statement that mines are not required. In such case mines and minerals continue to be the property of the owner, vide section 3(*3*).

—but liable to give notice.

2. But before such owner or his lessee or assignee can work any mine under the land acquired, he must first give a notice at least 60 days beforehand to the Local Government; and the Local Government may then proceed to take action according to section 5 and the succeeding sections. The term "Local Government" in these sections has to be read as meaning a Local Authority or Company where the land has been acquired for and transferred to such body, *vide* section 14 *post*: and a notice under this section shall have to be then served on such body, and not on the Local Government.

Omission to serve a notice under this section entails the liabilities laid down in section 13 *post*.

Who is the person so liable?

3. The words "immediately entitled to work" refer to the actual person who would be desirous of working the mine, whether he be the owner himself or his lessee or assignee. The object seems to be that any action which may be taken under section 5 etc. and section 13 may be directly effective. The corresponding words in the (English) Railways Clauses Consolidation Act, 1845, section 78, are "owner, lessee, or occupier of any mines or minerals * * * * desirous of working the same." The time before which the notice is required is however 30 days under the English Act, and the mines sought to be worked are not simply those directly under the land acquired, but also those "within the prescribed distance, or where no distance is or shall be prescribed, forty yards therefrom," including works connected therewith.

Power to prevent or restrict working.

5. (*1*) At any time or times after the receipt of a notice under the last foregoing section, and whether before or after the expiration of the said period of sixty days, the Local Government may cause the mines or minerals to be inspected by a person appointed by it for the purpose; and

(*2*) If it appears to the Local Government that the working or getting of the mines or minerals, or any part thereof, is likely to cause damage to the surface of the land or any works thereon, the Local Government may publish[10] a declaration of its willingness, either—

(*a*) to pay compensation for the mines or minerals still unworked or ungotten, or that part thereof, to all persons having an interest in the same; or

(*b*) to pay compensation to all such persons in consideration of those mines or minerals, or that part thereof, being worked or gotten in such manner and subject to such restrictions as the Local Government may in its declaration specify.

(*3*) If the declaration mentioned in case (*a*) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person.

(*4*) If the declaration mentioned in case (*b*) is made, then those mines or minerals, or that part

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[10] The following words after "publish" were deleted by the Devolution Act XXXVIII of 1920, viz—"in such manner as the Governor General in Council may, from time to time".

thereof, shall not thereafter be worked or gotten by any person save in the manner and subject to the restrictions specified by the Local Government.

(5) Every declaration made under this section should be published in such manner as the Local Government may direct.[11]

Interpretation.

The term "Local Government" in this section excepting sub-section (5), means the "Local Authority" or "Company" when land has been acquired for and transferred to such body : *vide* section 14 *post.*

Sub-section (1).

Power of inspection.

2. *Inspection* :—Independently of this section, the Local Government, Local Authority or Company, has the right of inspection of the working of mines under the land acquired and works connected therewith, *vide* section 11 *post.* Under the Indian Mines Act, IV of 1923, the Local Government and the Mining Board constituted under that Act have also the power to inspect and regulate the working of mines and minerals not only with a view to secure health and safety of the persons employed in the mining operations, but also "for protection from injury in respect of any mines when the workings are discontinued, of property vested in His Majesty or any Local Authority or Railway Company" [section 30 (i)]. As to penalty for obstruction to inspection, see section 12 *post.*

Inspection may be after the 60 days.

3. *Before or after* the expiration of the said period of 60 days :—This covers cases where a party after giving a notice does nothing to indicate that he intends to work the mine, or where the Railway Authority or Company "desires to postpone the purchase of the mines until it is known that they are to be worked"[12].

[11] This sub-section (5) was added by the same Act XXXVIII of 1920.

[12] As observed in *Great Western Railway Co. vs. Bennett* (1867) L. R. 2 H. L. 27. See also *Dixon vs. Caledonian Rail Co.* (1880) 5 App. cas. 820, 43 L. T. 418, 29 W. R. 249 from which the principle was taken by the Select Committee of the Bill of 1885.

Sub-sections (2) to (4).

Declaration :

4. *Declaration* :—This corresponds to "counter-notice" under the English law, stating that the Company for whom the land on the surface has been acquired, desire that the minerals or some part of them, should not be worked and that they are willing to pay the compensation: section 78 of Railways Clauses Consolidation Act, 1845.

—may be for total stoppage or for restrictions in the working.

The declaration may be for total prevention of working, in which case clause (a) would apply ; or it may be for permitting working but subject to specified restrictions, in which case clause (b) would apply. The effect on the party in case (a) is that he must stop all work [sub-section (3)], and in case (b), that he must work subject to the restrictions specified [sub-section (4)]. In either case, the Company, Local Authority or Government, issuing the declaration, is liable to compensate all persons interested for the damage they suffer by reason of such prevention or restriction. [13] See section 6 as to the mode of determining the compensation, and also sections 8, 9 and 10.

Mode of determining persons interested and amount of compensation.

6. When the working or getting of any mines or minerals has been prevented or retricted under section 5, the persons interested in those mines or minerals and the amounts of compensation payable to them respectively shall, subject to all necessary modifications, be ascertained in the manner provided by the Land Acquisition Act, 1870, for ascertaining the persons interested in the land to be acquired under that Act, and the amounts of compensation payable to them respectively.

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[13] See *Secy. of State vs. Lodna Colliery Co.*, 15 Pat. 510, 164 I.C. 860, A. I. R. 1936 Pat. 513.

This section applies to cases of "prevention" as well as "restriction" under clauses (a) and (b) of section 5(2).

2. The reference to the Act of 1870, has now to be read as reference to the Land Acquisition Act of 1894. See paragraph 4 of the notes under the Preamble *ante*.

Meaning of "persons interested."

"Persons interested" would thus be the same as under section 3(*b*) of that Act, and the principles in section 23, so far as may, would be applicable. But the Collector does not come in, and from section 14 it would seem that after the acquisition has been made, questions such as arise under sections 5, 6 etc. of the Act of 1885 would be matters between the acquiring body and the party. If any party does not agree to the amount tendered by the former or its apportionment his remedy is to institute suit in the Civil Court, for adjudication of his claim.

Civil suit, if no agreement.

3. The measure of compensation will obviously vary according as the declaration is under clause (a) or under clause (b) of section 5(*2*) *ante*. Payment of compensation under this section does not mean the same thing as purchase or "acquisition" : but in case (a), when the working is totally stopped, the amount of compensation would be practically the same as would be allowed if the underground mines were acquired ; and the same principles as indicated in paragraph 8 of the notes under section 3 *ante* would generally apply.

Measure of compensation :

4. In case of a declaration under clause (b) of section 5(*2*), the amount of compensation will depend upon the nature of the restrictions imposed, that is to say, upon the extent to which the owner suffers loss or damage by reason of such restrictions.

-when working is restricted.

The principle of compensation where a mine-owner is prevented or restricted, recognised in England, is explained in the case of *Bwlfa and Merthyr Dare Steam Colliery* [14],

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[14] *Bwlfa and Merthyr Dare Steam Collieries etc. vs. Pontypridd Waterworks Co.* (1903) A. C. 426.

thus :—"The true enquiry here is not what is the value of the coal-field or of the coal, but what would the colliery Company, if they had not been prohibited, have made out of the coal during the time it would have taken to get it. * * * That means that so far as money can compensate him he is to be placed in the position in which he would have been if he had been free to go on working." The same principle has been enunciated in a Patna case—in the case of mines worked by a lessee under royalty holders, the amount of compensation jointly payable to the royalty holders and the lessee can not exceed in the aggregate the value of the coal locked up which would otherwise have been raised less the working costs.[15]

If Local Government does not offer to pay compensation, mines may be worked in a proper manner.

7. (*1*) If before the expiration of the said sixty days the Local Government does not publish a declaration as provided in section 5, the owner, lessee or occupier of the mines may, unless and until such a declaration is subsequently made, work the mines or any part thereof in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area where the same are situate.

(*2*) If any damage or obstruction is caused to the surface of the land or any works thereon by improper working of the mines, the owner, lessee or occupier of the mines shall at once, at his own expense, repair the damage or remove the obstruction as the case may require.

(*3*) If the repair or removal is not at once effected, or, if the Local Government so thinks fit, without

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[15] *Secy. of State vs. Lodna Colliery Co.*, 15 Pat. 510, 164 I. C. 860, A. I. R. 1936 Pat. 513.

waiting for the same to be effected by the owner, lessee or occupier, the Local Government may execute the same and recover from the owner, lessee, or occupier the expense occasioned thereby.

Proper manner :—The words "in a manner proper and necessary for the beneficial working thereof and according to the usual manner of working such mines" are borrowed from section 79 of the Railways Clauses Consolidation Act of 1845. In the case of *Ruabon Brick etc. Co.* [16] (1893) Lord Macnaghten observed —"I do not think that a mine owner * * * is entitled to enter upon the surface, which unquestionably belongs to the Railway Company, and break it up by working from the surface". But it has also been held that the owner is at liberty to work by surface operations, if that be the usual manner of working minerals in the locality [17]. The only test of "proper working" indicated in the section is whether it is worked "according to the usual manner of working such mines in the local area where the same is situate". If by such working damage is likely to be caused, the Local Government, Local Authority or Company as the case may be, may prevent the working by issue of a declaration under section 5 *ante*, at any time whether before or after the expiry of the 60 days mentioned in it.

Meaning of "proper manner".

2. The damage under sub-section (3) would, in the absence of any special provision, be presumably recoverable by civil suit. The term "Local Government" in this sub-section means local authority or Company where the land has been acquired for such body : vide section 14 *post*.

Damage from improper working.

8. If the working of any mines is prevented or restricted under section 5, the respective owners,

[16] *Ruabon Brick and Terra Cotta Co. vs. G. W. Ry. Co.* (1893) 1 Ch. 427.
[17] *Midland Ry. Co. vs. Robinson* (1889) 15 App. cas. 19.

lessees and occupiers of the mines, if their mines extend so as to lie on both sides of the mines the working of which is prevented or restricted, may cut and make such and so many airways, headways, gateways or water-levels through the mines, measures or strata, the working whereof is prevented or restricted, as may be requisite to enable them to ventilate, drain and work their said mines; but no such airway, headway, gateway or water-level shall be of greater dimensions or section than may be prescribed by the Local Government in this behalf, and, where no dimensions are so prescribed, not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the surface or works, or so as to injure the same, or to interfere with the use thereof.

Mining communications.

Section 8 follows section 80 of the Railways Clauses Consolidation Act of 1845, and indicates the requisites which would ordinarily ensure the safety of a railway or similar work on the surface; and if these requirements involve restrictions on what would otherwise be the proper manner of working such mines, compensation would be payable according to sections 9 and 10.

The words "Local Government" were substituted in place of the words "Governor-General in Council" by the Devolution Act, XXXVIII of 1920.

9. The Local Government shall, from time to time, pay to the owner, lessee or occupier of any such mines extending so as to lie on both sides of the mines, the working of which is prevented or restricted, all such additional expenses and losses as

Local Government to pay compensation for injury done to mines.

may be incurred by him by reason of the severance of the lands lying over those mines or of the continuous working of those mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the surface or works, and for any minerals not acquired by the Local Government which cannot be obtained by reason of the action taken under the foregoing sections; and if any dispute or question arises between the Local Government and the owner, lessee or occupier as aforesaid, touching the amount of those losses or expenses, the same shall be settled as nearly as may be in the manner provided for the settlement of questions touching the amount of compensation payable under the Land Acquisition Act, 1870.

This section follows section 81 of the Railways Clauses Consolidation Act of 1845.

Where a tunnel is necessary to inter-connect the working of the owner's mines on either side, that is an item of additional expense to be paid for [18].

The reference to the Act of 1870 is to be taken as reference to the Land Acquisition Act of 1894: and what is meant is that the general principles of compensation laid down in the latter Act (*vide* section 23), would apply so far as may, when the dispute is taken to the Civil Court.

And also for injury arising from any airway or other work.

10. If any loss or damage is sustained by the owner or occupier of the lands lying over any such mines, the working whereof has been so prevented or restricted as aforesaid (and not being the owner,

[18] *Midland Rail Co. vs. Miles* (1886) 33 Ch. D. 632.

lessee or occupier of those mines), by reason of the making of any such airway or other works as aforesaid, which or any like work it would not have been necessary to make but for the working of the mines having been so prevented or restricted as aforesaid, the Local Government shall pay full compensation to that owner or occupier of the surface lands for the loss or damage so sustained by him.

This section corresponds to section 82 of the Railways Clauses Consolidation Act, 1845.

Power to officer of Local Government to enter and inspect the working of mines.

11. For better ascertaining whether any mines lying under land acquired in accordance with the provisions of this Act are being worked so as to damage the land or the works thereon, an officer appointed for this purpose by the Local Government may, after giving twenty-four hours' notice in writing, enter into and return from any such mines or the works connected therewith; and for that purpose the officer so appointed may make use of any apparatus or machinery belonging to the owner, lessee or occupier of the mines, and use all necessary means for discovering the distance from any part of the land acquired to the parts of the mines which have been, are being, or are about to be worked.

Corresponds to section 83 of the Railways Clauses Consolidation Act of 1845.

This gives general right of inspection to the Local Government, the local authority or the Company as the case may be.

in addition to the power under section 5(1) *ante*. Obstruction to such inspection is punishable under section 12.

Penalty for refusal to allow inspection.

12. If any owner, lessee or occupier of any such mines or works refuses to allow any officer appointed by the Local Government for that purpose to enter into and inspect any such mines or works in manner aforesaid, he shall be punished with fine which may extend to two hundred rupees.

Corresponds to section 84 of the Railways Clauses Consolidation Act of 1845, in which the fine provided is fifty pounds.

If mines worked contrary to provisions of this Act Local Government may require means to be adopted for safety of land acquired.

13. If it appears that any such mines have been worked contrary to the provisions of this Act, the Local Government may, if it thinks fit, give notice to the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making shape the land acquired and the works thereon, and preventing injury thereto; and if after such notice, any such owner, lessee or occupier does not forthwith proceed to construct the works necessary for making safe the land acquired and the works thereon, the Local Government may itself construct the works and recover the expense thereof from the owner, lessee or occupier.

Corresponds to section 85 of the Railways Clauses Consolidation Act, 1845.

The term "Local Government" will be taken to mean local authority or Company where the land has been acquired for such body.

Construction of Act when land acquired has been transferred to a local authority or Company.

14. When a statement under section 3 has been made regarding any land, and the land has been acquired by the Government, and has been transferred to or has vested by operation of law in a local authority or Company, then sections 4 to 13, both inclusive, shall be read as if for the words "the Local Government", where-ever they occur in those sections [except in section 5, sub-section (5) and section 8,] the words "the local authority or Company, as the case may be, which has acquired the land" were substituted.

The words "except in section 5, sub-section (5) and section 8" within brackets, were inserted by the Devolution Act, XXXVIII of 1920.

Sub-section (5) of section 5 laying down that the manner of publication of declaration under section 5 would be directed by the Local Government, was added by the same amendment Act. The amendment gives power to the Local Government to prevent irregular publication of the declaration by a Company or local authority by issuing directions for the proper manner of such publication.

The exception of section 8 necessarily followed from the substitution by the Devolution Act of 1920, of "Local Government" in place of "Governor General in Council" in the original section. The authority for prescribing the dimensions or section is retained by the Local Government.

Under the Adaptation of Indian Laws Order of 1937 issued by the Government of India, the term "Local Government" has now to be taken as meaning "Provincial Government".

2. When once land has been acquired for a local authority or a Company, with a statement (presumably agreed upon with them) that mines and minerals were not needed, the provisions of sections 4 to 13 which aim at providing a legal

means for preventing later on, danger or damage to the works of such local authority or Company on the surface, are matters which concern them primarily and which ought ordinarily to be settled by them either amicably or through the Courts of law.

Reasons for leaving these actions with such bodies.

In justification, therefore, of this delegation of the duties enjoined in these sections, the Select Committee in their Report on the Bill which led to the Act of 1885, observed as below :—

"If the Local Government or the Company exercising the powers of the Local Government neglects to come to terms with the mine-owner on his giving notice of his intention to work, it does so at the risk of its property. If, considering that the mine-owner is working improperly, it takes steps under section 7 to remedy the mischief with a view to charging the mine-owner with the cost, it does so at the risk of losing its money and of incurring serious legal consequences if the Court before which the case may ultimately come takes a different view of the matter. Similarly, if it considers that the mines are being worked contrary to the provisions of the Act and proceeds to take steps under section 13, it still acts at its own risk, for it is by no means certain that it will appear to the Court that the mines were being so worked".

Procedure to be followed.

3. The position thus is that in matters arising from sections 4 to 13 the local authority or Company concerned would try first to settle amicably with the parties concerned : failing which the matter would be taken to the Civil Court. But as has been observed under section 6, the law is not clear whether this should be done directly by the local authority or Company or the party or through the Collector (he does not really come in in this plan) and whether the action will be by way of a reference under cover of section 18 of the Land Acquisition Act of 1894 to the Special Court as defined in that Act or by an action in the ordinary Civil Court. The legal effect of a declaration issued under section 5 is that the mine owner is bound to the restrictions laid down in section 8 ;

Does any reference under sec. 18 of the Act of 1894 lie ?

and if he does not come to terms with the local authority or the Company as regards the amount of compensation, it will be his concern to take the matter to a Court of law.

15. Repealed[19] by Act XX of 1937, Second Schedule.

Definition of local authority and Company.

16. In this Act—

(a) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund; and

(b) "Company" means a Company registered under any of the enactments relating to Companies from time to time in force in British India, or formed in pursuance of an Act of Parliament or by Royal Charter or Letters Patent.

There is no definition of "local authority" in the main Land Acquisition Act. This definition is identical with that in the General Clauses Act 1897, section 3(*28*).

As for "Company", compare the definition in section 3(*e*) of the Land Acquisition Act of 1894.

This Act to be read with Land Acquisition Act, 1870.

17. This Act shall, for the purposes of all enactments for the time being in force, be read with and taken as part of the Land Acquisition Act, 1870.

By reason of section 2(3) of the Land Acquisition Act of 1894, this section will now be taken as having reference to that Act.

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[19] The section related to the proceedings under Act X of 1870 which were pending at the time when the Act of 1885 was passed. Its force was spent up and the section had become unnecessary.

APPENDIX.

THE CALCULTTA IMPROVEMENT ACT, 1911.

(Bengal Act V of 1911)

24. The Board may enter into and perform all such contracts as they may consider necessary or expedient for carrying out any of the purposes of this Act.

Power to make and perform contracts.

CHAPTER IV.

ACQUISITION AND DISPOSAL OF LAND.

Acquisition by Agreement.

68. The Board may enter into an agreement with any person for the purchase or leasing by the Board from such person of any land which the Board are authorized to acquire, or any interest in such land.

Power to purchase or lease by agreement.

Compulsory Acquisition.

69. The Board may, with the previous sanction of the Local Government, acquire land under the provisions of the Land Acquisition Act, 1894, for carrying out any of the purposes of this Act.

Power to acquire land under the Land Acquisition Act, 1894.

70. A Tribunal shall be constituted, as provided in section 72, for the purpose of performing the functions of the Court in reference to the acquisition of land for the Board under the Land Acquisition Act, 1894.

Tribunal to be constituted.

71. For the purpose of acquiring land under the said Act[1] for the Board,—

Modification of the Land Acquisition Act, 1894.

(*a*) the Tribunal shall (except for the purposes of section 54 of that Act[1]) be deemed to be the Court, and the President of the Tribunal shall be deemed to be the Judge, under the said Act[1];

(*b*) the said Act[1] shall be subject to the further modifications indicated in the Schedule;

[1] *i. e*, the Land Acquisition Act, 1894.

(c) the President of the Tribunal shall have power to summon and enforce the attendance of witnesses, and to compel the production of documents, by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 ; and

(d) the award of the Tribunal shall be deemed to be the award of the Court under the said Land Acquisition Act, 1894, and shall be final[a].

Constitution of Tribunal.

72. (1) The said Tribunal shall consist of a President and two assessors.

(2) The President of the Tribunal shall be either—

(a) a member of the Judicial Branch of the Imperial or Provincial Civil Service, of not less than ten years' standing in such Service, who has, for at least three years, served as District Judge or held judicial office not inferior to that of a Subordinate Judge ; or

(b) a barrister, advocate or pleader of not less than ten years' standing, who has practised as an advocate or pleader in the Calcutta High Court.

(3) The President of the Tribunal and one of the assessors shall be appointed by the Local Government, and the other assessor shall be appointed by the Corporation, or, in default of the Corporation, by the Local Government :

Provided that no person shall be eligible for appointment as a member of the Tribunal if he is a Trustee or is, for any of the reasons mentioned in section 9, disqualified for appointment as a Trustee.

(4) The term of office of each member of the Tribunal shall be two years ; but any member shall, subject to the proviso to sub-section (3), be eligible for reappointment at the end of that term.

(5) The Local Government may, on the ground of incapacity or misbehaviour, or for any other good and sufficient reason, cancel the appointment of any person as a member of the Tribunal.

(6) When any person ceases for any reason to be a member of the Tribunal, or when any member is temporarily absent in consequence of illness or any other unavoidable cause, the Local Government or (if the person whose place is to be filled was appointed by the Corporation) the Corporation, or, in default of the Corporation, the Local Government, shall forthwith appoint a fit person to be a member in his place.

(7) All appointments made under this section shall be published by notification.

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[a] As to appeals to the High Court from decisions of the President of the Tribunal, *see* the Calcutta Improvement (Appeals) Act, 1911 (XVIII of 1911).

73. Each member of the Tribunal shall be entitled to receive such remuneration, either by way of monthly salary or by way of fees, or partly in one of those ways and partly in the other, as the Local Government may prescribe.

Remuneration of members of Tribunal.

74. (*1*) The President of the Tribunal shall, from time to time, prepare a statement showing—

Officers and servants of Tribunal.

(*a*) the number and grades of the clerks and other officers and servants whom he considers should be maintained for carrying on the business of the Tribunal,

(*b*) the amount of the salary to be paid to each such officer and servant, and

(*c*) the contributions payable under section 146 in respect of each such officer and servant.

(*2*) The President of the Tribunal shall, from time to time, make rules—

(*i*) for regulating the grant of leave of absence, leave-allowances and acting-allowances to the officers or servants of the Tribunal ; and

(*ii*) for establishing and maintaining a provident or annuity fund, for compelling all or any of the officers or servants of the Tribunal (other than any servant of the Government in respect of whom a contribution is paid under section 146) to contribute to such fund, at such rates and subject to such conditions as may be prescribed by such rules, and, with the sanction of the Board, for supplementing such contributions out of the funds of the Board :

Provided that a Government servant employed as an officer or servant of the Tribunal shall not be entitled to leave or leave-allowances otherwise than as may be prescribed in any general or special orders of the Government for regulating the transfer of Government servants to foreign service.

(*3*) All statements prepared under sub-section (*1*), and all rules made under sub-section (*2*), shall be subject to the previous sanction of the Local Government.

(*4*) Subject to any directions contained in any statement prepared under sub-section (*1*), and any rules made under sub-section (*2*), and for the time being in force, the power of appointing, promoting and granting leave to officers and servants of the Tribunal, and the power of reducing, suspending or dismissing them, shall vest in the President of the Tribunal.

Payments by Board on account of Tribunal.

75. The remuneration prescribed under section 73 for members of the Tribunal, and the salaries, leave-allowances and acting allowances, prescribed under section 74 for officers and servants of the Tribunal, shall be paid by the Board to the President of the Tribunal for distribution.

Power to make rules for Tribunal.

76. (*1*) The President of the Tribunal may, from time to time, with previous sanction of the Local Government, make rules[1], not repugnant to the Code of Civil Procedure, 1908, for the conduct of business by the Tribunal.

(*2*) All such rules shall be published by notification.

Award of Tribunal how to be determined.

77. (*1*) For the purpose of determining the award to be made by the Tribunal under the Land Acquisition Act, 1894,—

(*a*) if there is any disagreement as to the measurement of land, or the amount of compensation or costs to be allowed, the opinion of the majority of the members of the Tribunal shall prevail;

(*b*) questions relating to the determination of the persons to whom compensation is payable, or the apportionment of compensation, may be tried and decided in the absence of the assessors if the President of the Tribunal considers their presence unnecessary; and, when so tried and decided, the decision of the President shall be deemed to be the decision of the Tribunal; and

(*c*) notwithstanding anything contained in the foregoing clauses, the decision on all questions of law and procedure shall rest solely with the President of the Tribunal.

(*2*) Every award of the Tribunal, and every order made by the Tribunal for the payment of money, shall be enforced by the Court of Small Causes of Calcutta as if it were a decree of that Court.

Abandonment of Acquisition.

Abandonment of acquisition in consideration of special payment.

78. (*1*) In any case in which the Local Government has sanctioned the acquisition of land, in any area comprised in an improvement scheme, which is not required for the execution of the scheme, the owner of the land, or any person having an interest therein, may make an application to the Board, requesting that the acquisition of the land should be abandoned in consideration of the payment by him of a sum to be fixed by the Board in that behalf.

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[1] For rules issued under s. 76(*1*), *see* the Bengal Local Statutory rules and Orders, 1924, Vol. III p. 1990, and Calcutta Gazette, Part I, page 58, dated 18th Jany. 1915.

(2) The Board shall admit every such application if it—

(a) reaches them before the time fixed by the Collector under section 9 of the Land Acquisition Act, 1894, for making claims in reference to the land, and

(b) is made by all persons who have interests in the land greater than a lease for years having seven years to run.

(3) If the Board decide to admit any such application, they shall forthwith inform the Collector; and the Collector shall thereupon stay for a period of three months all further proceedings for the acquisition of the land, and the Board shall proceed to fix the sum in consideration of which the acquisition of the land may be abandoned.

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THE SCHEDULE.

(Referred to in section 71).

FURTHER MODIFICATIONS IN THE LAND ACQUISITION ACT, 1894.

Amendment of section 3.

1. After clause (e) of section 3 the following shall be deemed to be inserted, namely—

"(e1) the expression 'local authority' includes the Board of Trustees constituted under the Calcutta Improvement Act, 1911."

2. *Rep. by the Calcutta Improvement (Amendment) Act, 1922 (Ben. Act I of 1922), s. 2.*

Amendment of section 15.

3. In section 15, for the word and figures "and 24" the figures, word and letter "24 and 24A" shall be deemed to be substituted.

Amendment of section 17.

4. (1) In section 17, sub-section (3), after the figures "24" the words, figures and letter "or section 24A" shall be deemed to be inserted.

(2) To the said section 17 the following shall be deemed to be added namely :—

"(4) Sub-sections (1) and (3) shall apply also in the case of any area which is stated in a certificate granted by a salaried Presidency Magistrate or a Magistrate of the first class to be unhealthy.

"(5) Before granting any such certificate, the Magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (3) of section 9, and shall hear without any avoidable delay any objections which may be urged by them.

"(6) When proceedings have been taken under this section for the acquisition of any land, and any person sustains damage in consequence of being suddenly dispossessed of such land, compensation shall be paid to such person for such dispossession."

5. After section 17 the following shall be deemed to be inserted, namely :—

New section 17A.

"17A. In every case referred to in section 16 or section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Board; and the land shall thereupon vest in the Board, subject to the liability of the Board to pay any further costs which may be incurred on account of its acquisition."

Transfer of land to Board.

6, 7, 8 and 9 (1). *Rep. by the Calcutta Improvement (Amendment) Act, 1922 (Ben. Act I of 1922) s. 2.*

9. (2) At the end of section 28 the following shall be deemed to be added, namely :—

Amendment of section 28.

"(3) For the purposes of clause *first* of sub-section (1) of this section,—

(*a*) the market-value of the land shall be deemed to be the market value according to the disposition of the land at the date of the publication of the declaration relating thereto under section 6;

(*b*) if it be shown that, before such declaration was published, the owner of the land had taken active steps and incurred expenditure to secure a more profitable disposition of the same, further compensation, based on his actual loss, may be paid to him;

[1][(*bb*) if the market-value has been increased or decreased owing to the land falling within or near to the alignment of a projected public street, so much of the increase or decrease as may be due to such cause shall be disregarded;

[1](*bbb*) if any person without the permission of the Chairman required by section 63, sub-section (8), of the Calcutta Improvement Act, 1911, has erected re-erected or added to any wall (exceeding ten feet in height) or building within the street alignment or building line of a projected public street, then any increase in the market-value resulting from such erection, re-erection or addition shall be disregarded;]

(*c*) if the market-value has been increased by means of any improvement made by the owner or his predecessor in interest within two years before the aforesaid declaration was published such increase

[1] These clauses (*bb*) and (*bbb*) were inserted by the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915), s. 9.

shall be disregarded, unless it be proved that the improvement was made *bona fide* and not in contemplation of proceedings for the acquisition of the land being taken under this Act;

(*d*) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded, and the market-value shall be deemed to be the market-value of the land if put to ordinary uses; and

(*e*) if the market-value of any building is specially high in consequence of the building being so over-crowded as to be dangerous to the health of the inmates, such over-crowding shall be disregarded, and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from over-crowding."

Amendment of section 24.

10. For clause *seventhly* of section 24 the following shall be deemed to be sustituted, namely :—

"*seventhly*, any outlay on additions or improvements to land acquired, which was incurred after the date of the publication of the declaration under section 6, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair."

New section 24A.

11. After section 24 the following shall be deemed to be inserted, namely :—

Further provisions for determining compensation.

"24A. In determining the amount of compensation to be awarded for any land acquired for the Board under this Act, the Tribunal shall also have regard to the following provisions, namely,—

(*1*) when any interest in any land acquired under this Act has been acquired after the date of the publication of the declaration under section 6, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land;

(*2*) if, in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation shall not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, *minus* the estimated cost of putting it into such condition or state;

(3) if, in the opinion of the Tribunal, any building, which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation shall not exceed the value of the materials of the building, *minus* the cost of demolishing the building."

12. *Rep. by the Calcutta Improvement (Amendment) Act, 1922, (Ben. Act I of 1922), s, 2.*

13. After section 48 the following shall be deemed to be inserted, namely :—

New sections 48A and 48B.

"48A. (1) If, within a period of two years from the date of the publication of the declaration under section 6, in respect of any land, the Collector has not made an award under section 11 with respect to such land, the owner of the land shall be entitled to receive compensation for the damage suffered by him in consequence of the delay.

Compensation to be awarded when land not acquired within two years.

(2) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

"48B. No compensation shall be payable in pursuance of section 48 or section 48A when proceedings for the acquisition of land have been abandoned on the execution of an agreement, or the acceptance of a payment, in pursuance of sub-section (4) of section 78 of the Calcutta Improvement Act, 1911."

Section 48 and 48A not to apply in certain cases.

14. After sub-section (1) of section 49, the following shall be deemed to be inserted, namely :—

Amendment of section 49.

"(1a) For the purposes of sub-section (1), land which is held with and attached to a house and is reasonably required for the enjoyment and use of the house shall be deemed to be part of the house."

THE CALCUTTA IMPROVEMENT (Appeals) ACT, 1911.[1]

(Act XVIII of 1911)

(23rd September 1911.)

An Act to modify certain provisions of the Calcutta Improvement Act, 1911.

Ben. Act V of 1911.

Whereas it is expedient to modify the provisions of the Calcutta Improvement Act, 1911, so as to provide in certain cases for an appeal to the High Court from the awards of the Tribunal constituted under that Act ;

It is hereby enacted as follows :—

Short title.

1. This Act may be called the Calcutta Improvement (Appeals) Act, 1911.

Definitions.

2. In this Act,—

(*1*) "Court" means the High Court of Judicature at Fort William in Bengal ; and

(*2*) "Tribunal" has the same meaning as in the Calcutta Improvement Act, 1911.

Appeal from awards of the Tribunal.

3. (*1*) Notwithstanding anything contained in the Calcutta Improvement Act, 1911, an appeal shall lie to the Court in any of the following cases, namely :—

(*a*) where the decision is that of the President of the Tribunal sitting alone in pursuance of clause (*b*) of section 77 of the said Act :

(*b*) where the decision is that of the Tribunal, and

(*i*) the President of the Tribunal grants a certificate that the case is a fit one for appeal, or

(*ii*) the Court grants special leave to appeal :

Provided that the Court shall not grant such special leave unless the President has refused to grant a certificate under sub-clause (*i*) and the amount in dispute is five thousand rupees or upwards.

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[1] Legislative Papers.—For Statement of Object and Reasons, see Gazette of India, 199, Pt. V, p. 118 ; for Proceedings in Council see *Ibid*, Pt. VI, pp. 685, 686 and 680 to 687.

Local Extent.—The local extent of this Act is the same as that of Ben. Act V of 1911.

(2) An appeal under clause (b) of sub-section (1) shall only lie on [1](one or more of) the following grounds, namely :—

(i) the decision being contrary to law or to some usage having the force of law ;

(ii) the decision having failed to determine some material issue of law or usage having the force of law ;

(iii) a substantial error or defect in the procedure provided by the said Act which may possibly have produced error or defect in the decision of the case upon the merits.

Procedure of such appeals.

4. Subject to the provisions of section 3, the provisions of the Code of the Civil Procedure, 1908, with respect to appeals from original decrees shall, so far as may be, apply to appeals under this Act.

Execution of orders of Court.

5. The Chief Judge of the Court of Small Causes of Calcutta shall, on application, execute any order passed by the Court on[2] (appeal under this Act as if it were) a decree made by himself.

Period of limitation for such appeals.

6. An appeal under section 3 shall be deemed to be an appeal under the Code of Civil Procedure, 1908, within the meaning of No. 156 of the First Schedule to the Indian Limitation Act, 1908.

THE CALCUTTA MUNICIPAL ACT, 1923.

(*Bengal Act III of 1923.*)

General provisions.

Application of Land Acquisition Act, 1894, with amendment.

475. Any land or buildings which the Corporation are authorized by this Act to acquire may be acquired under the provisions of the Land Acquisition Act, 1894, and for that purpose the said Act shall be subject to the amendment that the market-value of any land or building to be acquired shall be deemed, for the purposes of clause *first* of sub-section (1) of section 23 of the said Land Acquisition Act, to be the market-value according to the disposition of such land or building at the date of publication of the declaration relating thereto under section 6 of the said Land Acquisition Act :

[1] These words were inserted by the Repealing and Amending Act 1914 (X of 1914).

[2] These words were substituted for the words "as if it was" by the Repealing and Amending Act, 1914 (X of 1914).

Provided as follows :—

(*i*) if, within a period of two years from the date of the publication of such declaration in respect of any land or building, the Collector has not made an award under section 11 [1] of the said Land Acquisition Act with respect to such land or building, the owner of the land or building shall be entitled to receive compensation for the damage suffered by him in consequence of the delay ;

(*ii*) if it be shown that, before such declaration was published, the owner of the land or building had taken active steps and incurred expenditure to secure a more profitable disposition of the same, further compensation, based on his actual loss, may be paid to him ;

(*iii*) if the market-value is specially high in consequence of the property being put to a use which is unlawful or contrary to public policy, that use shall be disregarded and the market-value shall be deemed to be the market-value of the land or building if put to ordinary uses ;

(*iv*) if the market-value has been increased by means of any improvement made by the owner or his predecessor in interest within one year before the aforesaid declaration was published, such increase shall be disregarded, unless it be proved that the improvement was made *bonafide* and not in contemplation of proceedings for the acquisition of the land or building being taken under the said Land Acquisition Act.

Vesting in Corporation of land and buildings acquired under the Land Acquisition Act, 1894.

476. On payment by the Corporation of the compensation awarded under the said Land Acquisition Act, 1894, in respect of any land or buildings and of any other charges incurred in acquiring the said land or buildings, the same shall vest in the Corporation.

THE LAND ACQUISITION (Bengal Amendment) ACT, 1934. [2]

(*Bengal Act II of 1934.*)

(*8th March 1934*)

An Act further to amend the Land Acquisition Act, 1894.

I of 1894

Whereas it is expedient to amend the Land Acquisition Act, 1894, in its application to Bengal, in the manner hereinafter appearing ;

[1] This figure was substituted for the figure "26" by the Calcutta Municipal (Amendment) Act IV of 1930.

[2] For Statement of Objects of Reasons, see *Calcutta Gazette*, 1933, Pt. IV, page 344 ; and for Proceedings in Council, *see* the Proceedings of the Bengal Legislative Council, Vol. XLIII, No. 1, p. 50.

5 & 6 Geo. V, c. 61; 6 & 7 Geo. V, c. 37; 9 & 10 Geo. V, c. 101.

And Whereas the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act;

It is hereby enacted as follows:—

Short title and extent.

1. (*1*) This Act may be called the Land Acquisition (Bengal Amendment) Act, 1934.

(*2*) It extends to the whole Bengal.

Application of Act.

2. The Land Acquisition Act, 1894, hereinafter referred to as the said Act, shall in its application to Bengal, be amended in the manner hereinafter provided.

Amendment of section 3 of Act I of 1894.

3. For clause (d) of section 3 of the said Act the following clause shall be substituted, namely:—

"(*d*) the expression 'Court' means a principal Court of original jurisdiction, and includes the Court of any additional Judge, Subordinate Judge or Munsif whom the (Provincial Government)[1] may appoint, by name or by virtue of his office, to perform, concurrently with any such principal Civil Court, all or any of the functions of the Court under this Act within any specified local limits and, in the case of a Munsif, up to the limits of the pecuniary jurisdiction with which he is vested under section 19 of the Bengal, Agra and Assam Civil Courts Act, 1887."

XII of 1887.

THE CITY OF BOMBAY IMPROVEMENT TRUST TRANSFER ACT, 1925.

(*Bombay Act XVI of 1925*)

Acquisition of land.

The Board may acquire land by agreement.

62. Subject to the provisions of this Act, it shall be lawful for the Committee on behalf of the Board to agree with the owners of any land or of any interest in land needed by the Board for the purposes of this Act, or with the owners of any right which may have been created by legislative enactment over any street forming part of the land so needed, for the purchase of such land or of any interests in

[1] These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

such land, or for compensating the owners of any such right in respect of any deprivation thereof or interference therewith.

Extent to which Land Acquisition Act shall apply to acquisition of land otherwise than by agreement.

63. Notwithstanding anything contained in the Land Acquisition Act, 1894 (in this and the next succeeding sections referred to as "the said Act"), the said Act shall not, except to the extent set forth in Schedule A, apply to the acquisition of land under this Act, but the said Act shall, to the extent set forth in the said schedule, regulate and apply to the acquisition of land otherwise than by agreement, and shall for that purpose be deemed to form part of this chapter in the same manner as if enacted in the body hereof subject to the provisions following, namely :—

(1) a reference to any section of the said Act shall be deemed to be a reference to such section, as modified by the provisions of this chapter, and the expression "land", as used in the said Act, shall, in addition to the meaning included therein under clause *(a)* of Section 3 of the said Act, be deemed, for the purposes of this Act, to include rights created by legislative enactment over any street ; and clause *(b)* of Section 3 of the said Act shall, for the purposes of this Act, be read as if the words and parentheses "(including the Crown)" were inserted after the words "includes all persons", and the words "or if he is the owner of any right created by legislative enactment over any street forming part of the land" were added after the words "affecting the land" ;

(2) in the construction of sub-section *(2)* of Section 4 of the said Act and the provisions of this chapter, the provisions of the said sub-section shall, for the purposes of this Act, be applicable immediately upon the passing of a resolution under Section 30, 42, or 52 and the expression "Local Government" shall be deemed to include the Board, and the words "such locality" shall be deemed to mean the locality referred to in any such resolution ;

(3) in the construction of the sections of the said Act deemed to form part of this chapter and the provisions of this chapter, the publication of a declaration under Sections 37, 44 or 53 shall be deemed to be the publication of a notification under Section 4, sub-section *(1)* of the said Act ; provided that the date of publication of the notification under Sections 33, 44 or 53 shall be deemed to be the date of the publication of the declaration under Section 6 of the said Act for the purposes of Section 23 *first* and *sixthly* and Section 24 *fourthly* and *seventhly* of the said Act.

Provided also that where land is acquired under Section 84 or sub-section (2) of Section 85 the date of the notification under Section 88 shall be deemed to be the date of publication of a declaration under Section 6 of the said Act.

Provided further that the provisions of sub-section (2) of Section 23 of the said Act shall apply when land, other than land forming part of any sanctioned scheme prepared in accordance with the provisions of Section 30 is acquired specifically under this Act for the purpose of a poorer classes accommodation scheme or of a police accommodation scheme; and that in all other cases in which the land is notified for acquisition after the date on which this Act comes into operation additional compensation in consideration of the compulsory nature of the acquisition shall be awarded on the scale set out in Schedule AA.

(4) In the construction of sub-section (2) of Section 50 of the said Act and the provisions of this chapter the Board shall be deemed to be the local authority or company concerned.

Special provisions as to compensation.

64. In determining the amount of compensation to be awarded for any land or building acquired under this Act, the following further provisions shall apply :—

(1) the Court shall take into consideration any increase to the value of any other land or building belonging to the person interested likely to accrue from the acquisition of the land or from the acquisition, alteration or demolition of the building;

(2) when any addition to, or improvement of, the land or building has been made after the date of the publication under Sections 33, 44 or 53 of a notification relating to the land or building, such addition or improvement shall not (unless it was necessary for the maintenance of the building in a proper state of repair) be included, nor in the case of any interest acquired after the said date shall any separate estimate of the value thereof be made, so as to increase the amount of compensation to be paid for the land or building.

(3) in estimating the market value of the land or building at the date of the publication of a notification relating thereto under Sections 33, 44 or 53 the Court shall have due regard to the nature and the condition of the property and the probable duration of the building if any in its existing state and to the state of repair thereof and to the provisions of clauses (4), (5) and (6) of this section;

(4) if in the opinion of the Court the rental of the land or building has been enhanced by reason of its being used for an illegal purpose, or being so overcrowded as to be dangerous or injurious to the health of the inmates, the rental shall not be deemed to be greater than the rental which would be obtainable if the land or building were used

for legal purposes only, or were occupied by such a number of persons only as it was suitable to accommodate without risk of such overcrowding;

(5) if in the opinion of the Court the building is in a state of defective sanitation, or is not in reasonably good repair, the amount of compensation shall not exceed the estimated value of the property after the building has been put into a sanitary condition, or into reasonably good repair, less the estimated expense of putting it into such condition, or repair;

(6) if in the opinion of the Court the building being used or intended or likely to be used for human habitation is not reasonably capable of being made fit for human habitation, the amount of compensation for the building shall not exceed the value of the materials, less the cost of demolition.

SCHEDULE A.

(See Section 63.)

Portions of the Land Acquisition Act, 1894, regulating the acquisition of land under this Act.

Part I—Preliminary, except clauses (e) and (f) of Section 3.

Part II—Acquisition, except sub-section (1) of Section 4, Section 6 and sub-section (2) of Section 17.

Part III—Reference to Court and Procedure thereon, except sub-section (2) of Section 23 and clauses (6) and (7) of Section 24.

Part IV—Apportionment of compensation.

Part V—Payment.

Part VI—Temporary occupation of land.

Part VII—Miscellaneous.

SCHEDULE AA.

(See Section 63.)

Scale of Additional Compensation for Compulsory Acquisition.

Amount of compensation awarded.	Percentage to be allowed in addition under Section 63.
Not exceeding ten thousand rupees, or, if the amount exceed ten thousand rupees for the first ten thousand.	Six per cent.
Exceeding ten thousand, but not exceeding fifty thousand, for the amount by which it exceeds ten thousand.	Four per cent.

Exceeding fifty thousand rupees, but not exceeding one lakh, for the amount by which it exceeds fifty thousand.	Three and a half per cent.
Exceeding one lakh, for the amount by which it exceeds one lakh.	Two per cent.

THE UNITED PROVINCES TOWN IMPROVEMENT ACT, 1919.

(*United Provinces Act VIII of 1919*)

Compulsory acquisition.

Power to acquire land under the Land Acquisition Act, 1894.

56. The Trust may, with the previous sanction of the Local Government, acquire land under the provisions of the Land Acquisition Act, 1894, as modified by the provisions of this Act, for carrying out any of the purposes of this Act.

Tribunal to be constituted.

57. A Tribunal shall be constituted, as provided in Section 59, for the purpose of performing the functions of the Court in reference to the acquisition of land for the Trust, under the Land Acquisition Act, 1894.

Modification of the Land Acquisition Act, 1894.

58. For the purpose of acquiring land under the said Act for the Trust—

(*a*) the Tribunal shall (except for the purposes of Section 54 of that Act) be deemed to be the Court, and the President of the Tribunal shall be deemed to be the Judge, under the the said Act ;

(*b*) the said Act shall, be subject to the further modifications indicated in the Schedule ;

(*c*) the President of the Tribunal shall have power to summon and enforce the attendance of witnesses, and to compel the production of documents, by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 ; and

(*d*) the award of the Tribunal shall be deemed to be the award of the Court under the said Land Acquisition Act, 1894, and shall be final.

Constitution of Tribunal.

59. (*1*) The Tribunal shall consist of a President and two Assessors.

(*2*) The President of the Tribunal shall be either—

(*a*) a member of the Judicial Branch of the Imperial or Provincial Civil Service of not less than ten years' standing in such service, who has for at least three years served as District Judge or held

Judicial office not inferior to that of a Subordinate Judge of the first grade; or

(*b*) a barrister, advocate or pleader of not less than ten years' standing who has practised as an Advocate or Pleader in the High Court of Judicature at Allahabad or the Court of the Judicial Commissioner of Oudh.

(*3*) The President of the Tribunal and one of the Assessors shall be appointed by the Local Government, and the other Assessor shall be appointed by the Municipal Board, or, in default of appointment by the Municipal Board, within two months of their being asked by the Local Government to make such appointment, by the local Government :

Provided that no person shall be eligible for appointment as a member of the Tribunal if he is a Trustee or would, if he were a Trustee, be liable to removal by the Local Government under section 10.

(*4*) The term of office of each member of the Tribunal shall be two years ; but any member shall, subject to the proviso of Sub-section (3), be eligible for reappointment at the end of that term.

(*5*) The Local Government may, on the ground of incapacity or misbehaviour, or for any other good and sufficient reason, cancel the appointment of any person as member of the Tribunal.

(*6*) When any person ceases for any reason to be a member of the Tribunal, or when any member is temporarily absent in consequence of illness or any unavoidable cause, the authority which appointed him shall forthwith appoint a fit person to be a member in his place. Where the authority so appointing was the Municipal Board and the Municipal Board fails to make a fresh appointment within two months of being asked to do so by the Local Government, the appointment may be made by the Local Government.

Power to make rules for Tribunal

63.—(*1*) The Local Government may from time to time make rules, not repugnant to the Code of Civil Procedure, 1908, for the conduct of the business by Tribunals established under this Act.

(*2*) All such rules shall be published by notification.

Award of Tribunal how to be determined.

64.—(*1*) For the purpose of determining the award to be made by the Tribunal under the Land Acquisition Act, 1894,—

(*a*) if there is any disagreement as to the measurement of land, or the amount of compensation or costs to be allowed, the opinion of the majority of the members of the Tribunal shall prevail;

(*b*) questions relating to the determination of the persons to whom compensation is payable, or the apportionment of compensation,

may be tried and decided in the absence of the Assessors, if the President of the Tribunal considers their presence unnecessary: and, when so tried and decided, the decision of the President shall be deemed to be the decision of the Tribunal; and

(c) notwithstanding anything contained in the foregoing clauses, the decision on all questions of Law and Procedure shall rest solely with the President of the Tribunal.

(2) Every award of the Tribunal, and every order made by the Tribunal for the payment of money, shall be enforced by a Court of Small Causes within the local limits of whose jurisdiction it was made as if it were a decree of that Court.

THE SCHEDULE

(Referred to in Section 58)

Further modifications in the Land Acquisition Act, 1894 (hereinafter called "the said Act").

Amendment of section 3.

1. After clause (e) of Section 3 of the said Act, the following shall be deemed to be inserted, namely :—

"(ee) The expression, 'local authority' includes a Trust constituted under the United Provinces Town Improvement Act, 1919."

Notification under section 4 and declaration under section 6 to be replaced by notifications under sections 36 and 42 of this Act.

2. (1) The first publication of a notice of an improvement Scheme under Section 36 of this Act shall be substituted for, and have the same effect as, publication, in the Gazette and in the locality, of a notification under sub-section (1) of Section 4 of the said Act, except where a Declaration under Section 4 or Section 6 of the said Act has previously been made and is still in force.

(2) Subject to the provisions of Sections 10 and 11 of this Schedule, the issue of a notice under sub-section (4) of Section 29 in the case of land acquired under that sub-section, and in any other case the publication of a notification under Section 42 shall be substituted for and have the same effect as a declaration by the local Government under Section 6 of the said Act, unless a declaration under the last mentioned section has previously been made and is still in force.

Amendment of section 11.

3. The full stop at the end of Section 11 of the said Act shall be deemed to be changed to a semi-colon, and the following shall be deemed to be added, namely, :—

"(iv) the costs which, in his opinion, should be allowed to any person who is found to be entitled to compensation, and who is not

entitled to receive the additional sum of fifteen *per centum* mentioned in sub-section (2) of Section 23, as having been actually and reasonably incurred by such person in preparing his claim and putting his case before the Collector.

"The Collector may disallow, wholly or in part, costs incurred by any person, if he considers that the claim made by such person for compensation is extravagant."

Amendment of section 15.

4. In Section 15 of the said Act, the word and figures "and 24" the figures, word, and letters "24 and 24A" preceded by a comma, shall be deemed to be substituted.

Amendment of section 17.

5. (*1*) In sub-section (3) of Section 17 of the said Act, after the figures, "24" the words, figures and letter "or Section 24-A" shall be deemed to be inserted.

(*2*) To the said Section 17 the following shall be deemed to be added, namely, :—

"(*4*) Sub-sections (1) and (3) shall apply also in the case of any area which is stated in a certificate granted by the District Magistrate or a Magistrate of the first class to be unhealthy.

"(*5*) Before granting any such certificate the Magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (3) of Section 9, and shall hear, without any avoidable delay any objections which may be urged by them.

"(*6*) When proceedings have been taken under this section for the acquisition of any land, and any person sustains damage in consequence of being suddenly dispossessed of such land compensation shall be paid to such person for such dispossession."

Transfer of land to trust.

6. After Section 17 of the said Act the following shall be deemed to be inserted namely, :—

"17-A. In every case referred to in Section 16 or Section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Trust; and the land shall thereupon vest in the Trust, subject to the liability of the Trust to pay any further costs which may be incurred on account of its acquisition."

Amendment of section 18.

7. The full stop at the end of sub-section (*1*) of Section 18 of the said Act shall be deemed to be changed to a comma, and the words "or the amount of the costs allowed" shall be deemed to be added.

Amendment of section 19.

8. After the words "amount of compensation" in clause (*c*) of Section 19 of the said Act, the words "and of costs (if any)" shall be deemed to be inserted.

Amendment of section 20.

9. After the words "amount of the compensation" in clause (c) of Section 20 of the said Act the words "or costs" shall be deemed to be inserted.

Amendment of section 23.

10. (1) In clause *first* and clause *sixthly* of sub-section (1) of Section 23 of the said Act, for the words, "publication of the declaration relating thereto under Section 6" and the words "publication of the declaration under Section 6" shall be deemed to be substituted,—

"(a) If the land is being acquired under sub-section (3) of Section 29 of this Act, the words 'issue of the notice under sub-section (3) of Section 29 of the United Provinces Town Improvement Act, 1919' and

(b) in any other case, the words 'first publication of the notification under Section 36 of the United Provinces Town Improvement Act, 1919.'

(2) The full stop at the end of the sub-section (2) of Section 23 of the said Act shall be deemed to be changed to a colon, and the following proviso shall be deemed to be added :—

"Provided that this sub-section shall not apply to any land acquired under the United Provinces Town Improvement Act, 1919, except,—

(a) land acquired under sub-section (4) of Section 29 of that Act, and

(b) buildings in the actual occupation of the owner or occupied free of rent by a relative of the owner, and land appurtenant thereto, and

(c) gardens not let to tenants but used by the owners as a place of resort."

(3) At the end of Section 23 of the said Act, the following shall be deemed to be added, namely—

"(3) for the purposes of clause *first* of sub-section (1) of this section—

(a) the market-value of the land shall be the market-value according to the use to which the land was put at the date with reference to which the market-value is to be determined under that clause ;

(b) if it be shown that before such date the owner of the land had in good faith taken active steps and incurred expenditure to secure a more profitable use of the same, further compensation based on his actual loss may be paid to him ;

(c) if any person without the permission of the Trust required by clause (b) of sub-section (1) of Section 29 or by sub-section (3) of Section 30 or by sub-section (4) of Section 32 of the United Provinces Town Improvement Act, 1919, has erected, re-erected, added to or altered any building or wall so as to make the same project beyond the street-alignment prescribed under Section 29 or the street-alignment or building line shown in any plan finally adopted by the Trust under Section 30, or within the area specified in sub-section (4) of Section 32, as the case may be, then any increase in the market-value resulting from such erection, re-erection, addition or alteration shall be disregarded ;

(d) if the market-value has been increased by means of any improvement made by the owner or his predecessor in interest within 2 years before the aforesaid date, such increase shall be disregarded unless it be proved that the improvement so made was made in good faith and not in contemplation of proceedings for the acquisition of the land being taken under this Act ;

(e) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded and the market-value shall be deemed to be the market-value of the land if put to ordinary uses ; and

(f) if the market-value of any building is specially high in consequence of the building being so over-crowded as to be dangerous to the health of the inmates, such over-crowding shall be disregarded, and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from over-crowding ;

(g) when the owner of the land or building has, after the passing of the United Provinces Town Improvement Act, 1919, and within two years preceding the date with reference to which the market-value is to be determined, made a return under Section 158 of the United Provinces Municipalities Act, 1916, of the rent of the land or building, the rent of the land or building shall not in any case be deemed to be greater than the rent shown in the latest return so made, save as the Court may otherwise direct, and the market-value may be determined on the basis of such rent :

Provided that where any addition to, or improvement of, the land or building has been made after the date of such latest return and previous to the date with reference to which the market-value is to be determined, the Court may take into consideration any increase in the letting value of the land due to such addition or improvement.

Amendment of section 24.

11. For clause *seventhly* of section 24 of the said Act, the following shall be deemed to be substituted, namely,—

"*Seventhly*, any outlay on additions or improvements to land acquired, which was incurred after the date with reference to which the market-value is to be determined, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair."

New section 24A.

12. After Section 24 of the said Act the following shall be deemed to be inserted, namely,—

Further provision for determining compensation.

"24-A. In determining the amount of compensation to be awarded for any land acquired for the Trust under this Act, the Tribunal shall also have regard to the following provisions, namely,—

(1) When any interest in any land acquired under this Act has been acquired after the date with reference to which the market-value is to be determined, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land :

(2) If, in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation for such building shall not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, minus the estimated cost of putting it into such condition or state ;

(3) If, in the opinion of the Tribunal, any building which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation for such building shall not exceed the value of the materials of the building, minus the cost of demolishing the building."

Amendment of section 31.

13. (1) After the words "the compensation" in sub-section (1) of section 31 of the said Act, and after the words "the amount of the compensation" in sub-section (2) of that section the words "and costs (if any)" shall be deemed to be inserted.

(2) After the words "any compensation" in the concluding proviso to sub-section (2) of section 31 of the said Act the words "or costs" shall be deemed to be inserted.

New section 48A.

14. After section 48 the following shall be deemed to be inserted, namely,—

Compensation to be awarded when land not acquired within two years.

"48-A. (1) If within a period of two years from the date of the publication of the declaration under section 6 in respect of any land, the Collector has not made an award under section 11 with respect to such land, the owner of the land shall, unless he has been to a material extent responsible for the delay, be entitled to receive compensation for the damage suffered by him in consequence of the delay.

(2) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

Amendment of section 4.

15. After sub-section (1) of section 49 of the said Act, the following shall be deemed to be inserted, namely,—

(1-a) For the purpose of sub-section (1) land, which is held with and attached to a house, and is reasonably required for the enjoyment and use of the house, shall be deemed to be part of the house."

THE RANGOON DEVELOPMENT TRUST ACT, 1920.

(Burma Act No. V of 1920.)

Power of Board to purchase and hold moveable and immoveable property.

33. The Board may, for the purposes of this Act, purchase and hold moveable and immoveable property within or without the City.

Power of Board to acquire immoveable property.

34(1). The Local Government on behalf of the Board may, under the Land Acquisition Act, 1894, subject to the modifications set out in Schedule I and in addition to the provisions contained in Chapter IV, acquire any land or any right or interest therein, whether attached thereto or not, either in connection with any scheme or independently of any scheme, and any scheme may provide for such acquisition.

(2) The Local Government on behalf of the Board may acquire under the Land Acquisition Act, 1894, at any time prior to the completion of the scheme under sub-section (1), in addition to any land comprised in the scheme, any other land which is beneficially or injuriously affected thereby.

(3) The Local Government on behalf of the Board may acquire under the Land Acquisition Act, 1894, any easement affecting any

immoveable property vested in the Board where such acquisition is necessary for the development of the City :

Provided that where there is any dispute as to the existence of such necessity such dispute shall be referred for decision to the Court as provided in section 39 before the issue of the notice of intention to acquire any such easement.

(4) The word "land" in the Land Acquisition Act, 1894, shall for the purposes of this Act, be deemed to include all the rights, interests and easements referred to in this section.

Reference to the Court.

Constitution of the Court.

39. (1) A reference to the Court, under section 34, sub-section (3), and under section 38, sub-section (9), shall ordinarily lie to a single judge, but a reference, except in the case of a reference under section 34, shall lie to a bench of two judges in the following cases :—

(*a*) where the amount of the claim involved exceeds the sum of rupees twenty-five thousand ;

(*b*) in the matters mentioned in section 38, sub-section (9), clauses (*a*) and (*b*) respectively.

(2) The decision of the Court whether the reference lies to a single judge or to a bench shall be final :

Provided that in a reference to a bench if the judges constituting such bench are unable to agree they shall refer any matter upon which they may differ to another judge of the Court whose decision thereon shall be final.

SCHEDULE I

(Referred to in Section 34.)

Modifications in the Land Acquisition Act, 1894.

1. In section 3,—

(1) At the end of clause (e) the following shall be deemed to be inserted, namely :—

"the expression 'local authority' includes the Board constituted under the provisions of the Rangoon Development Trust Act, 1920."

(2) In clause (f), after the word "includes" the following words shall be deemed to be inserted, namely :—

"any of the purposes of the Rangoon Development Trust Act, 1920, and".

2. To section 11, the following shall be deemed to be added, namely :—

"and (iv) the costs which, in his opinion, should be allowed to any person who is found to be entitled to compensation, and who is not entitled to receive the additional sum of fifteen *per centum* mentioned in section 23, sub-section (2), as having been actually and reasonably incurred by such person in preparing his claim and putting his case before the Collector :

Provided that the Collector may disallow, wholly or in part, costs incurred by any person, if he considers that the claim made by such person for compensation is extravagant."

3. In section 15, for the words and figures "and 24" the figures, word and letter "24 and 24A" shall be deemed to be substituted.

4. In section 17, sub-section (3), after the figures "24" the words, figures and letter "or section 24A" shall be deemed to be inserted.

5. After section 17, the following shall be deemed to be inserted, namely :—

"17A. In every case referred to in section 16, or section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Board ; and the land shall thereupon vest in the Board, subject to the liability of the Board to pay any further costs which may be incurred on account of its acquisition."

6. At the end of sub-section (1) of section 18, the words "or the amount of the costs allowed" shall be deemed to be inserted.

7. After the words "amount of compensation" in clause (c) of section 19, the words "and of costs (if any)" shall be deemed to be inserted.

8. After the words "amount of compensation" in clause (c) of section 20, the words "or costs" shall be deemed to be inserted.

9. (1) In sub-section (2) of section 23, after the words "in every case" the following shall be deemed to be inserted, namely :—

"except where the land acquired is comprised in a scheme which has been sanctioned by the Local Government and published under section 38 of the Rangoon Development Trust Act, 1920."

(2) At the end of section 23, the following shall be deemed to be added, namely :—

"(3) For the purposes of clause *first* of sub-section (1) of this section :

(a) the market value of any land in any area comprised in a scheme published under section 38 of the Rangoon Development Trust Act, 1920, and acquired for the purposes of such scheme, shall be deemed to

be the market value of the land at the date of the resolution under sub-section (1) of section 88 of the Rangoon Development Trust Act, 1920, if such land is acquired within three years from such date, or on the date of acquisition if such acquisition takes place more than three years after the date of such resolution ;

(b) if it be shown that, before the date of such resolution, the owner of the land had taken active steps and incurred expenditure to secure a more profitable disposition of the same further compensation, not exceeding in amount the said expenditure, may be paid to him ;

(c) if the market value is especially high in consequence of the land being put to a use, which is unlawful or contrary to public policy, that use shall be disregarded, and the market value shall be deemed to be the market value of the land if put to ordinary uses ;

(d) if the market value of any building is specially high in consequence of the building being so over-crowded as to be dangerous to the health of the inmates, such over-crowding shall be disregarded, and the market value shall be deemed to be the market value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from over-crowding."

10. For clause *seventhly* of section 24 the following shall be deemed to be substituted, namely :—

"*seventhly*, any outlay on additions or improvements to land or buildings comprised in, and acquired for the purposes of, any scheme sanctioned by the Local Government and published under section 88 of the Rangoon Development Trust Act, 1920, which was incurred after the date of the resolution under section 88, sub-section (1) of the Rangoon Development Trust Act, 1920, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair."

11. After section 24, the following shall be deemed to be inserted, namely :—

"24A. In determining the amount of compensation to be awarded for any land acquired for the Board for the purposes of the Rangoon Development Trust Act, 1920, the Court shall also have regard to the following provisions, namely :—

(1) When any interest in any land acquired for the purposes of the said Act has been acquired after the date of the resolution under section 88, sub-section (1), of the said Act, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land.

(2) If, in the opinion of the Court, any building is in a defective state from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation shall not exceed the sum which the Court considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, *minus* the estimated cost of putting it into such condition or state.

(3) If, in the opinion of the Court, any building, which is used or is intended or is likely to be used for human habitation, or human occupation for any purpose whatever, is not reasonably capable of being made fit for such human habitation, or occupation, the amount of compensation shall not exceed the value of the materials of the building *minus* the cost of demolishing the building".

12. (1) After the words "the compensation" in sub-section (1) of section 31, and after the words "the amount of the compensation" in sub-section (2) of that section, the words "and cost (if any)" shall be deemed to be inserted.

(2) After the words "any compensation" in the concluding proviso to sub-section (2) of section 31, the words "or costs" shall be deemed to be inserted.

DELHI IMPROVEMENT TRUST.

(*Notification of the Government of India, No. F. 23-10/37-H, dated the 2nd March 1937*).

I. *Extension of the United Provinces Town Improvement Act, 1919* :—

In exercise of the powers conferred by section 7 of the Delhi Laws Act, 1912 (XIII of 1912), the Governor General in Council is pleased to extend to that part of the Province of Delhi which is described in the Schedule the United Provinces Town Improvement Act, 1919 (United Provinces Act VIII of 1919), with the following modifications, namely :—

In the said Act, as so extended,—

1. (i) For the words "Local Government" wherever they occur, the words "Chief Commissioners" shall be substituted.

* * * * *

4. For section 3 the following section shall be substituted, namely :—

"3. Creation and incorporation of Trust.—The duty of carrying out the provisions of this Act in the local area to which the Act has been extended shall, subject to the conditions and limitations

hereinafter contained, be vested in a Board to be called "The Delhi Improvement Trust" (hereinafter called the Trust), and such Board shall be a body corporate and have perpetual succession and a common seal, and shall by the said name sue or be sued."

5. For section 4 the following section shall be substituted, namely :—

"4. Constitution of Trust.—(1) The Trust shall consist of seven Trustees, namely :—

(a) a Chairman ;

(b) an officer of the Central Public Works Department ;

(c) the Assistant Director of Public Health, Delhi ;

(d) a Financial Adviser ;

(e) two members of the Municipal Committee of Delhi ;

(f) one other person.

(2) The Chairman and the persons referred to in clauses (b), (d) and (f) of sub-section (1) shall be appointed by the Chief Commissioner by notification.

(3) The Assistant Director of Public Health, Delhi, shall be an ex-officio member of the Trust.

(4) The two members of the Municipal Committee referred to in clause (e) of sub-section (1) shall be elected by the Municipal Committee.

(5) If the Municipal Committee does not, by such date as may be fixed by the Chief Commissioner, elect a person to be a Trustee, the Chief Commissioner shall, by notification, appoint a member of the Municipal Committee to be a Trustee and any person so appointed shall be deemed to be a Trustee as if he had been duly elected by the Municipal Committee."

23. In section 56, the words "as modified by the provisions of this Act," shall be omitted.

24. In clause (b) of section 58, after the words "the said Act shall" the words, "in respect of any improvement scheme mentioned in this Act," shall be inserted.

25. In section 59—

(i) in sub-section (2)—

(a) in clause (a), for the words "or Provincial Civil Service," and for the words "Civil Judge of the first grade", the words "or of a Provincial Civil Service", and the words "Subordinate Judge of the first class", shall, respectively, be substituted ; and

(b) in clause (b), for the words "in the High Court of Judicature at Allahabad or the Court of the Judicial Cmmissioner of Oudh" the following shall be substituted, namely :—

"in the High Court of Judicature at Lahore or in the Court of the District Judge at Delhi" ; and

(*ii*) in sub-sections (*3*) and (*6*), for the words "municipal board", wherever they occur, the words "Municipal Committee of Delhi" shall be substituted.

26. In sub-section (*1*) of section 63, for the words "Tribunals" the words "a Tribunal" shall be substituted.

40. In the Schedule—

(*i*) after the words and figures "United Provinces Town Improvement Act, 1919", wherever they occur, the words "as extended to the Province of Delhi," shall be inserted ;

(*ii*) in section *1*, for the words "a Trust" the words "the Delhi Improvement Trust" shall be substituted ;

(*iii*) in section *2*, sub-section (*2*) shall be renumbered as sub-section (*3*) and after sub-section (*1*) the following sub-section shall be inserted, namely :—

"(2) Proceedings under section 38 and sub-section (*1*) of section 40 of the United Provinces Town Improvement Act, 1919, as extended to the Province of Delhi, shall be substituted for and have the same effect as proceedings under section 5A of the said Act" ; and

(*iv*) in sub-section (*3*) of section 10, the following shall be omitted, namely :—

"(*g*) When the owner of the land or building has after passing of the United Provinces Town Improvement Act, 1919, and within two years preceding the date with reference to which the market-value is to be determined, made a return under section 158 of the United Provinces Municipalities Act, 1916, of the rent of the land or building, the rent of the land or building shall not in any case be deemed to be greater than the rent shown in the latest return so made, save as the Court may otherwise direct, and the market-value may be determined on the busis of such rent :

Provided that where any addition to, or improvement of, the land or building has been made after the date of such latest return and previous to the date with reference to which the market-value is to be determined, the Court may take into consideration any increase in the letting value of the land due to such addition or improvement."

II. Extension of section 78 of the Calcutta Improvement Act, 1911.

In exercise of the powers conferred by section 7 of the Delhi Laws Act 1912 (XIII of 1912), the Governor General in Council is pleased to extend to that part of the Province of Delhi which is described in the

Schedule section 78 of the Calcutta Improvement Act, 1911 (Bengal Act V of 1911), with the following modifications, namely :—

1. In the said section, as so extended,—

(i) for the words "Local Government", and for the words "the Board", wherever they occur, the words "Chief Commissioner", and the words "the Trust", shall, respectively be substituted ;

(ii) in sub-section (2) for the word "them" the words "the Trust" shall be substituted ;

(iii) in sub-section (3), for the words "decide" and "they" the words "decides" and "it" shall, respectively, be substituted ;

(iv) in sub-section (4), for the words "have arranged", and for the words "are satisfied", the words "has arranged", and the words "is satisfied", shall, respectively, be substituted ; and

(v) sub-sections (10) and (11) shall be omitted.

2. The said section, as so modified, and so extended, shall be read together with, and as section 64-A with the heading "Abandonment of Acquisition", of, the United Provinces Town Improvement Act, 1919, as extended to the Province of Delhi.

ACT NO. X OF 1870.

Passed by the Governor General of India in Council.

(Received the assent of the Governor General on the 1st April 1870).

An Act for the acquisition of land for public purposes and for Companies.

Preamble.

WHEREAS it is expedient to consolidate and amend the law for the acquisition of land needed for public purposes and for Companies, and for determining the amount of compensation to be made on account of such acquisition ; It is hereby enacted as follows :—

PART I.

Preliminary.

Short title.

1. This Act may be called "The Land-Acquisition Act 1870":

Local extent Commencement.

It extends to the whole of British India;

And it shall come into force on the first day of June 1870.

Repeal of Acts.

2. On and from such day Act No. VI of 1857 (for the acquisition of land for public purposes), Act No. II of 1861 (to amend Act No. VI of 1857), and Act No. XXII of 1863 (to provide for taking land for works of public utility to be constructed by private persons or Companies and for regulating the construction and use of works on land so taken) shall be repealed.

All references made to any of the said Acts in subsequent Acts, orders or contracts shall be read as if made to this Act.

3. In this Act—

Interpretation-clause. "Land".

The expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth:

"Persons interested".

The expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act:

"Collector".

The expression "Collector" means the Collector of a District, and includes a Deputy Commissioner and any officer specially appointed by the Local Government to perform the functions of a Collector under this Act:

"Court"

The expression "Court" means, in the Regulation Provinces, British Burma and Sind, a principal Civil Court of original jurisdiction.

and in the Non-regulation Provinces other than British Burma and Sindh, the Court of a Commissioner of a Division,

unless when the Local Government has appointed (as it is hereby empowered to do), either specially for any case, or generally within any specified local limits, a judicial officer to perform the functions of a Judge under this Act, and then the expression "Court" means the Court of such officer:

The expression "Company" means a Company registered under the Indian Companies' Act, 1866, or formed in pursuance of an Act of Parliament, or by Royal Charter or Letters Patent;

"Company"

And the following persons shall be deemed persons "entitled to act" as and to the extent hereinafter provided (that is to say)—

"Entitled to act."

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability:

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age; and the guadians of minors and the committees of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics, or idiots themselves, if free from disability, could have acted.

PART II

Acquisition.

Preliminary Investigation.

4. Whenever it appears to the Local Government that land in any locality is likely to be needed for any public purpose, a notification to that effect shall be published in the local Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

Power to enter and survey.

Thereupon it shall be lawful for any officer either generally or specially authorised by such Government in this behalf, and for his servants and workmen,

to enter upon and survey and take levels of any land in such locality:

to dig or bore into the sub-soil:

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon :

Power to mark out line.

to mark such levels, boundaries and line by placing marks and cutting trenches ;

and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away part of any standing crop, fence or jungle.

Power to clear land.

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

Previous notice of entry.

5. The officer so authorised shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector, and such decision shall be final.

Payment for damage.

Declaration of intended Acquisition.

6. Subject to the provisions of Part VII of this Act, whenever it appears to the Local Government that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government, or of some officer duly authorised to certify its orders :

Declaration that land is required for a public purpose.

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid out of public revenues, or out of some Municipal Fund, or by a Company.

The declaration shall be published in the local official Gazette, and shall state the District or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

Contents of declaration.

The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be ; and after making such declaration, the Local Government may acquire the land in manner hereinafter appearing.

Declaration to be evidence.

7. Whenever any land shall have been so declared to be needed for a public purpose, or for a Company, the Local Government, or some officer authorised by the Local Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

After declaration, Collector to take order for acquisition.

8. The Collector shall thereupon cause the land (unless it has been already marked out under section four) to be marked out. He shall also cause it to be measured, and (if no plan has been made thereof) a plan to be made of the same.

Land to be marked out and measured.

9. The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

Notice to persons interested.

Such notice shall state the particulars of the land so needed and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests.

Contents of notice.

The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside, or have agents authorized to receive service on their behalf, within the Revenue District in which the land is situate.

Notice to occupiers.

In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post.

10. The Collector may also require any such person to deliver to him a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for the year next preceding the date of the statement.

Power to require statements as to names and interests.

Persons required to make statements to be deemed legally bound to do so.

Every person required to make or deliver a statement under this section or section nine, shall be deemed to be legally bound to do so within the meaning of sections one hundred and seventy-five and one hundred and seventy-six of the Indian Penal Code.

Enquiry into Value and Claims.

Enquiry into value and amount of compensation. Tender.

11. On the day so fixed, the Collector shall proceed to enquire summarily into the value of the land and to determine the amount of compensation which in his opinion should be allowed therefor, and shall tender such amount to the persons interested who have attended in pursuance of the notice.

Power to summon witnesses.

For the purpose of such enquiry, the Collector shall have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and (as far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure.

Postponement of enquiry.

12. The Collector may, if no claimant attends pursuant to the notice, or if for any other cause he thinks fit, from time to time postpone the enquiry to a day to be fixed by him.

Matters to be considered and matters to be neglected.

13. In determining the amount of compensation the Collector shall take into consideration the matters mentioned in section twenty-four, and shall not take into consideration any of the matters mentioned in section twenty-five.

Award by Collector.

Award in case of agreement as to compensation.

14. If the Collector and the persons interested agree as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same.

Award to be filed and to be evidence.

Such award shall be filed in the Collector's office and shall be conclusive evidence, as between the Collector and the persons interested, of the value of the land and the amount of compensation allowed for the same.

Reference where no claimant attends, or if Collector and persons interested cannot agree.

15. When the Collector proceeds to make the enquiry as aforesaid, whether on the day originally fixed for the enquiry or on the day to which it may have been postponed,

if no claimant attends,

or if the Collector considers that further enquiry as to the nature of the claim ought to be made by the Court,

or if any person whom the Collector has reason to think interested does not attend,

or if the Collector is unable to agree with the persons interested who have attended in pursuance of the notice as to the amount of compensation to be allowed,

or if upon the said enquiry any question respecting the title to the land or any rights thereto or interests therein arise between or among two or more persons making conflicting claims in respect thereof,

the Collector shall refer the matter to the determination of the Court in manner hereinafter appearing.

Taking Possession.

Power to take possession.

16. When the Collector has made an award under section fourteen or a reference to the Court under section fifteen, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances.

Power to take possession in cases of urgency

17. In cases of urgency, whenever the Local Government so directs, the Collector (though no such reference has been directed or award made) may, on the expiration of fifteen days from the publication of the notice mentioned in the first paragraph of section nine, take possession of any waste or arable land needed for public purposes or for a Company.

Such land shall thereupon vest absolutely in the Government free from all encumbrances.

The Collector shall offer to the persons interested compensation for the standing crops and trees (if any) on such land; and in case such offer is not accepted, the value of such crops and trees shall be allowed for in awarding compensation for the land under the provisions herein contained.

PART III.

Reference to Court and Procedure thereon.

18. In making a reference under section fifteen, the Collector shall state for the information of the Court, in writing under his hand,

Collector's statement on reference to Court.

(*a*) the situation and extent of the land needed,

(*b*) the names of the persons whom he has reason to think interested in such land,

(*c*) the amount awarded for damages and paid or tendered under sections five and seventeen, or either of them, the amount of compensation tendered for the land under section eleven, or, if no claimant has attended pursuant to the notice mentioned in section nine, the amount of compensation which the Collector is willing to give to the persons interested, and

(*d*) the grounds on which the amount of compensation was determined.

19. The Court shall thereupon cause to be served on each of the persons so named a notice requiring him (if he has not made a claim under section nine) to state to the Court, on or before a day to be therein mentioned, the sum which he claims as compensation for his interest in the land so needed.

Service of notice.

The Court shall also cause a notice to be served on the Collector and each of such persons requiring them to appoint, on or before a day to be therein mentioned, two qualified assessors (one to be nominated by the Collector and the other by the persons interested) for the purpose of aiding the Judge in determining the amount of the compensation.

If no claimant has attended pursuant to the notice mentioned in section nine, the Court shall cause to be affixed on some conspicuous place on or near the land needed a notice to the effect that, if the persons interested in such land do not, on or before a day to be therein mentioned, appear in Court and state the nature of their respective interests in the land and the amount and particulars of their claims to compensation, and nominate a qualified assessor, the Court will proceed to determine such amount.

20. In case of failure to nominate either of such assessors within the time so specified, the Judge shall himself appoint an assessor in his stead.

Power to appoint an assessor.

21. As soon as the assessors have been appointed, the Judge and the assessors shall proceed to determine the amount of the compensation.

Determination of amount.

Appointment of new assessor.

22. If before such amount is determined, any of the assessors, dies or desires to be discharged, or refuses or neglects, or becomes incapable to act, the party by whom he was appointed may appoint some other qualified person to act in his place.

If the assessor so dying, or desiring to be discharged, or refusing, or neglecting or becoming incapable were appointed by the Judge,

or, in the case of an assessor appointed by either party, if for the space of seven days after notice from the Court for that purpose the party who appointed such assessor fails to appoint another,

the Judge shall appoint some other qualified person in his stead.

Powers of new assessor.

Every assessor so substituted shall have the same powers as were vested in the former assessor at the time of his so dying or desiring to be discharged, or refusing, or neglecting or becoming incapable.

Proceedings to be in open Court.

23. Every proceeding uuder section twenty-one shall take place in open Court, and all persons entitled to practise in any Civil Court shall be entitled to appear, plead and act, or to appear and act (as the case may be), in such proceeding.

Matters to be considered in determining compensation.

24. In determining the amount of compensation to be awarded for land acquired under this Act, the Judge and assessors shall take into consideration—

First, the market-value, at the time of awarding compensation, of such land :

Secondly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of severing such land from his other land :

Thirdly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reson of the acquisition injuriously affecting his other property, whether moveable or immoveable, in any other manner, or his earnings ; and

Fourthly, if, in consequence of the acquisition, he is compelled to change his residence, the reasonable expenses (if any) incidental to such change.

Matters to be neglected in determining compensation.

25. But the Judge or assessors shall not take into consideration—

First, the degree of urgency which has led to the acquisition :

Secondly, any disinclination of the person interested to part with the land acquired :

Thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit :

Fourthly, any damage which, after the time of awarding compensation, is likely to be caused by or in consequence of the use to which the land acquired will be put :

Fifthly, any increase to the value of the land acquired, likely to accrue from the use to which it will be put when acquired :

Sixthly, any increase to the value of the other land of the person interested, likely to accrue from the use to which the land acquired will be put : or

Seventhly, any outlay or improvements on such land made, commenced, or effected with the intention of enhancing the compensation to be awarded therefor under this Act.

Rules as to amount of compensation.

26. Where the person interested has made a claim to compensation, pursuant to any notice mentioned in section nine or in section nineteen, the amount awarded to him shall not exceed the amount so claimed, or be less than the amount tendered by the Collector under section eleven.

Where the person interested has refused to make such claim, or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded may be less than, and shall in no case exceed, the amount so tendered.

Where the person interested has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him shall not be less than, and may exceed, the amount so tendered.

The provisions of this and the two preceding sections shall be read to every assessor, in a language which he understands, before he gives his opinion as to the amount of compensation to be awarded under this Act.

Record of Assessors' opinions.

27. The opinion of each assessor shall be given orally and shall be recorded in writing by the Judge.

Difference on questions of law.

28. In case of a difference of opinion between the Judge and the assessors or any of them upon a question of law or practice or usage having the force of law, the opinion of the Judge shall prevail, and there shall be no appeal therefrom.

Agreement as to amount of Compensation.

29. In case the Judge and one or both of the assessors agree as to the amount of compensation, their decision thereon shall be final.

30. In case of difference of opinion between the Judge and both of the assessors as to the amount of compensation, the decision of the Judge shall prevail, subject to the appeal allowed under section thirty-five.

Difference as to the amount of compensation.

31. Every assessor appointed under this Act, not being an officer of Government, shall receive such fee for his services as the Judge shall direct, provided that such fee shall not exceed five hundred rupees.

Assessors' fees.

Such fee shall be deemed to be costs in the proceeding.

32. The costs of all proceedings taken under this Part by order of Court shall, in the first instance, be paid by the Collector.

Costs of proceedings taken by order of Court.

33. Where the amount awarded does not exceed the sum tendered by the Collector, the costs of all proceedings under this Part shall be paid by the person interested.

Party to pay costs.

Where the amount awarded exceeds the sum so tendered, such costs shall be paid by the Collector.

34. Every award made under this Part shall be in writing signed by the Judge and the assessors or assessor concurring therein, and shall specify the amount awarded under the first clause of section twenty-four, and also the amounts (if any) respectively awarded under the second, third and fourth clauses of the same section, together with the grounds of awarding each of the said amounts.

Awards to be in writing.

It shall also state the amount of costs incurred in the proceedings under this part and by what persons and in what proportions they are to be paid.

Award to state amount of costs.

The costs (if any) payable by the person interested and not deducted under section forty-two may be recovered as if they were costs incurred in a suit, and as if the award were the decrees therein.

Recovery of costs

35. If the Judge differs from both the assessors as to the amount of compensation, he shall pronounce his decision, and the Collector or the person interested (as the case may be) may appeal therefrom to the Court of the District Judge, unless the Judge whose decision is appealed from is the District Judge, or unless the amount which the Judge proposes to award exceed five thousand rupees, in either of which cases the appeal shall lie to the High Court.

Appeal from Judge's decision as to compensation.

Every appeal under the section shall be presented within the time

and in manner provided by the Code of Civil Procedure for regular appeals in suits.

Provisions of Code of Civil Procedure made applicable.

86. The following provisions of the Code of Civil Procedure,

(*a*) as to adding parties,

(*b*) as to adjournment,

(*c*) as to death, marriage and bankruptcy or insolvency of parties,

(*d*) as to summoning witnesses and their attendance,

(*e*) as to examination of parties and witnesses,

(*f*) as to production of documents, and

(*g*) as to commissions to examine absent witnesses and to make local enquiries,

shall apply, so far as may be, to proceedings before the Court.

PART IV.

Apportionment of Compensation.

Particulars of apportionment to be specified.

87. Where there are several persons interested if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportianment.

Dispute as to apportionment.

88. When the amount of compensation has been settled under section fourteen, if any dispute arises as to the apportionment of the same or any part thereof, the Collector shall refer such dispute to the decision of the Court.

Determination of proportions.

89. When the amount of compensation has been settled by the Court, and there is any dispute as to the apportionment thereof, or when a reference to the Court has been made under section thirty-eight, the Judge sitting alone shall decide the proportions in which the persons interested are entitled to share in such amount.

An appeal shall lie from such decision to the High Court, unless the Judge whose decision is appealed from is not the District Judge, in which case the appeal shall lie in the first instance to the District Judge.

Every appeal under this section shall be presented within the time and in manner provided by the Code of Civil Procedure for regular appeals in suits.

PART V

Payment.

Payment of compensation to whom made.

40. Payment of the compensation shall be made by the Collector according to the award to the persons named therein, or, in the case of an appeal under section thirty-nine, according to the decision on such appeal :

Proviso.

Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

Payment on making award by Collector.

41. When the amount of the compensation has been settled under section fourteen, if the persons interested shall so desire, the Collector shall on the making of the said award pay the amount of such compensation and take possession of the land :

Provided that, in any case where immediate possession is not required, he may allow the occupants (if any) of the land to remain in occupation of the same, upon such terms as he and they may agree on, until possession of the land is required.

Percentage on market-value

42. In addition to the amount of any compensation awarded under Part II or Part III of this Act, the Collector shall, in consideration of the compulsory nature of the acquisition, pay fifteen per centum on the market-value mentioned in section twenty-four.

Payment with interest.

When the amount of such compensation is not paid on taking possession, the Collector shall pay the amount awarded and the said percentage with interest on such amount and percentage at the rate of six percentum per annum from the time of so taking possession :

Provided that the costs, if any, payable to the Collector by the person interested, shall be deducted from such amount and percentage.

Time of payment in appealable cases.

Provided that, in cases where the decision of the Court under Part III or Part IV of this Act is liable to appeal, the Collector shall not pay the amount of compensation or the percentage, or any part thereof until the time for appealing against such decision has expired and no appeal shall have been presented against such decision, or until any such appeal shall have been disposed of.

PART VI.

Temporary Occupation Of Land.

43. Subject to the provisions of Part VII of this Act, whenever it appears to the Local Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the Local Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

Temporary occupation of waste or arable land.

The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

In case the Collector and the persons interested differ as to the sufficiency of the compensation, the Collector shall refer such difference for the final order of the Court.

Difference as to compensation.

44. On payment of such compensation,
or on executing such agreement,
or on making a reference under section forty-three,
the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

Power to enter and take possession.

And on the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein :

Restoration of land taken.

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the Local Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

45. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference for the final order of the Court, and on such reference, or on a reference under section forty-three, the Judge sitting alone shall decide the difference referred.

Difference as to condition of land.

PART VII.

Acquisition of Land for Companies.

46. Subject to such rules as the Governor General of India in Council may from time to time prescribe in this behalf, the Local Government may authorize any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by section four.

Company may be authorised to enter and survey.

In every such case section four shall be construed as if, for the words "for such purpose," the words "for the purposes of the Company" were substituted, and section five shall be construed as if, after the words "the officer," the words "of the Company" were inserted.

Construction of section four and five.

Consent of Local Government to acquisition.

Execution of agreement.

47. The provisions of section six to section forty-five (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the Local Government, and unless the Company shall have executed the agreement hereinafter mentioned.

Previous enquiry.

48. Such consent shall not be given unless the Local Government be satisfied, by an enquiry held as hereinafter provided—

(1) that such acquisition is needed for construction of some work, and

(2) that such work is likely to prove useful to the public.

Such enquiry shall be held by such officer and at such time and place as the Local Government shall appoint.

Such officer may summon and enforce the attendance of witnesses, and compel the production of documents by the same means and, as

far as possible, in the same manner as is provided by the Code of Civil Procedure in the case of a Civil Court.

Agreement with Secretary of State in Council.

49. Such officer shall report to the Local Government the result of the enquiry, and if the Local Government is satisfied that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall, subject to such rules as the Governor General of India in Council may from time to time prescribe in this behalf, require the Company to enter into an agreement with the Secretary of State for India in Council providing to the satisfaction of the Local Government for the following matters, namely :—

(1) The payment to Government of the cost of the acquisition :

(2) The transfer, on such payment, of the land to the Company :

(3) The terms on which the land shall be held by the Company :

(4) The time within which, and the conditions on which, the work shall be executed and maintained ; and

(5) The terms on which the public shall be entitled to use the work.

Publication of agreement.

50. Every such agreement shall, as soon as may be after its execution, be published in the *Gazette of India* and also in the local official Gazette, and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

PART VIII.

Miscellaneous.

Service of notice.

51. Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section four, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

Whenever it may be practicable, the service of the notice shall be made on the person therein named.

When such person cannot be found, the service may be made on any adult male member of his family residing with him ; and if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business.

Obstruction to Survey, &c.

Filling trenches.

Destroying land-marks.

52. Whoever wilfully obstructs any person in doing any of the acts authorized by section four or section eight, or wilfully fills up, destroys, damages, or displaces any trench or mark made under section four shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

Magistrate to enforce surrender.

53. If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

Government not bound to complete acquisition.

54. Except in the case provided for in section forty-four, nothing in this Act shall be taken to compel the Government to complete the acquisition of any land unless an award shall have been made or a reference directed under the provisions hereinbefore contained.

Compensation when acquisition is not completed.

But whenever the Government declines to complete any such acquisition, the Collector shall determine the amount of compensation due for the damage (if any) done to such land under section four or section eight, and not already paid for under section five, and shall pay such amount to the person injured.

Part of house or building not to be taken.

55. The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desire that the whole of such house, manufactory or building shall be so acquired.

Payment of Collector's charges by Municipal Body or Company.

56. Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any Municipal Fund, or of any Company, the charges incurred by the Collector in such acquisition shall be defrayed from or by such Fund or Company.

Exemption from stamp-duty and fees.

57. No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

Bar of suits to set aside awards under Act.

58. No suit shall be brought to set aside an award under this Act.

Limitation of suits for anything done in pursuance of Act.

And no suit or other proceedings shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends, nor after the expiration of three months from the accrual of the cause of suit or other proceeding.

Power to make rules.

59. The Local Government shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made.

Publication of rules.

All such rules, alterations and additions shall, when sanctioned by the Governor General in Council, be published in the local official Gazette, and shall thereupon have the force of law.

GENERAL INDEX.